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(1980) 11 BOM CK 0002

In the Bombay High Court

Case No : O.C.J. Appeal No''s. 308 of 1979 and 479, 480 and 499 of 1980

State of Maharashtra — APPELLANT

Vs

Kusum Charudutt Bharma Upadhye — RESPONDENT

Date of Decision : 17-11-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 115, 141
Constitution of India, 1950 — Article 1, 124, 125, 126, 127
General Clauses Act, 1897 — Section 13, 8
Government of India Act, 1935 — Section 214, 219, 220, 223, 224
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1981) 83 BOMLR 75 : (1981) MhLj 93

Hon'ble Judges : B.N. Deshmukh, C.J;Shah, J;Madon, J;Kania, J;Chandurkar, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Madon, J.—The circumstances which led to this Special Bench being constituted are that on September 10, 1980 a Division Bench of this High Court consisting of Madon and Shah JJ., while hearing an Appeal, namely, Appeal No. 308 of 1979 Filmistan Private Limited v, Municipal Corporation of Greater Bombay, against the judgment and order of Pendse J., sitting singly on the Original Side, dismissing the Writ Petition filed by the appellants under Article 226 of the Constitution of India, entertained a doubt as to the competency of the said Appeal. Accordingly, they directed the papers in the said Appeal to be placed before the Chief Justice for him to constitute a larger Bench, if he so thought fit, for the determination of the question whether the said Appeal was maintainable under Clause 15 of the Letters Patent of this High Court. Six days later, that is, on September 16, 1980, while another Division Bench of this High Court consisting of Madon and Kania JJ., were taking admissions in appeals filed from judgments passed on the Original Side, the learned Advocate-General, appeared for the Appellants, the State of Maharashtra, in Appeal No. 499 of 1980 - State of Maharashtra v. Kusum, widow of Charudutt Bharma Upadhye - and applied that the said Appeal

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should be placed before a larger Bench to determine the question of the competency of the said Appeal in view of the judgment of a Full Bench of three Judges sitting on the Nagpur Bench of this High Court, a report of which judgment, according to the learned Advocate-General, had appeared in the newspapers. The learned Advocate-General also requested that as the matter was of vital public importance, notice should be given to him in his capacity as Advocate-General, and expressed his readiness to accept oral notice. Accordingly, oral notice was given to the learned Advocate-General, which he accepted in Court. A similar application was made to the said Division Bench by learned Counsel for the appellants, Union of India, in Appeal No. 479 of 1980 and by learned Counsel for the appellants, P. K. Banerji, General Manager of the High Explosives Factory at Kirkee, Pune, in Appeal No. 480 of 1980. The said Division Bench passed an order directing the papers in all the said three Appeals to be placed before the Chief Justice for him to constitute a larger Bench, if he so thought fit, for the purpose of deciding the competency of the said three Appeals. Thereupon this Special Bench was constituted by the Chief Justice.

2. All the above four Appeals arise out of Writ Petitions under Article 226 of the Constitution filed on the Original Side of this High Court. Miscellaneous Petition No. 1832 of 1978 against the judgment and order in which the said Appeal No. 308 of 1979 has been preferred inter alia challenged the constitutional validity of the amendments made in Section 217 of the Bombay Municipal Corporation Act (Bom. Ill of 1888) by Section 5 of the Maharashtra Municipal Corporations (Amendment) Act, 1975 (Mah. LXIII of 1975). The said Petition was heard and disposed of by Pendse J., sitting singly, in pursuance of Rule 623 of the Rules and Forms of the Bombay High Court (on the Original. Side), 1957, and by his judgment and order passed on July 16, 1979 he dismissed the said Petition and discharged the rule with costs. Miscellaneous Petition No. 1722 of 1975 against the judgment and order in which the said Appeal No. 479 of 1980 has been preferred was filed seeking a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution ordering and directing the respondents to the said Petition, namely, the Union of India, the Collector of Central Excise and the Superintendent of Central Excise, Range III, Division III, Bombay, to withdraw or cancel certain trade notices issued under Rule 233 of the Central Excise Rules, 1944, and an order issued by the Central Excise, Bombay, as also the demand made upon the original petitioners to comply with the requirements of the said order and the said notices. In the said Petition the original petitioners also sought a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution prohibiting the original respondents from requiring the original petitioners or the manufacturers from whom the original petitioners were purchasing goods for marketing under their trade name and from obtaining a licence under the Central Excise Act, 1944, or the Rules made thereunder. The said Petition was also heard and disposed of by Pendse J., sitting singly, under the said Rule 623, and by his

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judgment and order dated October 12, 1979 Pendse J., made the rule absolute and quashed the notice issued against the original petitioners. The said Appeal No. 479 of 1980 has been preferred by the original respondents, namely, the Union of India, the Collector of Central Excise, Bombay, and the said Superintendent of Central Excise. Miscellaneous Petition No, 1163 of 1979 against the judgment and order in which the said Appeal No. 480 of 1980 has been preferred was filed by the General Manager of the High Explosives Factory at Kirkee, Pune, and the Union of India against one of the employees of the said factory and the Presiding Officer of the Central Government, Labour Court No. II at Bombay, for a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution calling for the records or order passed by the said Labour Court on an application filed by the original respondent No. 1, and, after considering the same, quashing and setting aside the said order. The said Petition! came up for admission before Sawant J., sitting singly on the Original Side under the said Rule 623, who by his order dated June 19, 1979 summarily rejected the said Petition. The said Appeal No. 499 of 1980 has been preferred by the State of Maharashtra, the original Respondents No. 1, against an interlocutory order passed on September 10, 1980 by Mody J., in Writ Petition No. 1028 of 1980 filed by respondents Nos. 1 to 4 for a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution directing the State of Maharashtra forthwith to derequisition certain premises, namely, room No. 28 on the second floor of Pushpadant Building situate at 3, Chunam Lane, Off Lamington Road, Bombay-400 007, and to hand over possession of the said room to the respondents. The said petition came up for admission and for interim relief before Mody J., sitting singly and hearing and disposing of writ petitions filed on the Original Side in pursuance of Rule 636 of the Rules of the High Court of Judicature at Bombay (Original Side), 1980. (Hereinafter referred to as "the Original Side Rules, 1980"). Mody J., on September 10, 1980, admitted the said Petition and issued a rule nisi and passed the said interlocutory order against which the said Appeal No, 499 of 1980 has been preferred. By the said order Mody J., appointed the Court Receiver, High Court, Bombay, as receiver of the said room pending the hearing and final disposal of the said Petition, and further directed the Court Receiver to allow Respondents Nos. 1 to 4 and their family members, a list of whom was filed in Court, to use the said room for their personal residence as the Court Receiver''s agents, without security or payment, on the condition that the said respondents should pay all the outgoings in respect of the said room.

3. Now, according to a series of decisions of this High Court an order appointing an interlocutory receiver in a civil suit has been held to be a judgment within the meaning of the said expression in Clause 15 of the Letters Patent of this High Court, and an appeal against the said order has been held to be competent. The question which, however, arose in the Appeal preferred by the State of Maharashtra, namely, Appeal No. 499 of 1980, was whether in case no appeal

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was competent against the final order of single Judge disposing of a writ petition under Article 226 of the Constitution, whether an appeal would lie against an interlocutory order made in such petition which, were it made in a civil suit, would be appealable.

4. After the above orders were passed by the said two Division Benches, the judgment of the Full Bench of three Judges sitting on the Nagpur Bench of this High Court, referred to by the learned Advocate-General while making his aforesaid application for referring the matter-to a larger Bench, became available. That was the judgment of a Full Bench consisting of Masodkar, Waikar and Mohta JJ., in Shankar Naroba Salunke v. Gyanchand Lobhachand Kothari (1980) Letters Patent Appeal No. 3 of 1979 (with Letters Patent Appeals'' Nos. 10, 11, and 17 of 1979 and 34 of 1980), decided on September 3, 1980 (Nagpur Full Bench) (Unreported). The said Full Bench held that no appeal under Clause 15 of the Letters Patent was competent against the judgment of a single Judge in a petition entertained pursuant to Rule 18 of chap. XVIII of the Bombay High Court Appellate Side Rules, 1960, in exercise of fee power conferred on the High Court under Articles 226 and 227 of the Constitution. The reasoning which led the said Full Bench to arrive at the above conclusion would render equally incompetent an appeal under Clause 15 of the Letters Patent against the judgment of a single Judge in a writ petition under Article 226 of the Constitution filed on the Original Side of this High Court.

5. While making his above application for referring the matter to a larger Bench the learned Advocate-General had urged that the question which has arisen for consideration was of great importance and its resolution one of great urgency because it not only affected private parties but also the State of Maharashtra, the Union of India and a number of Government undertakings and authorities, all of whom at one Lime or the other arc appellants in appeals from orders in writ petitions decided on the Original Side of this High Court. There was great, force and substance in the submission of the learned Advocate-General and accordingly a notice was put up permitting all parties and their advocates in similar matters to intervene at the hearing of the preliminary point of competency of the appeal which had arisen in the above four Appeals, In pursuance of the said notice a number of counsel appeared at the hearing before this Special Bench.

6. After hearing all counsel we have framed the following three questions for our determinations:

(1) Whether an appeal would lie under Clause 15 of the Letters Patent from the judgment of a single Judge of the High Court under Article 226 of the Constitution of India in a petition filed on the Original Side or the Appellate Side of the High Court?

(2) Whether an appeal would lie under cl, 15 of the Letters Patent from the judgment of a single Judge of the High Court in a petition filed under Article 227

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of the Constitution of India?

(3) Whether an appeal would lie from an interlocutory order made by a single Judge of the High Court appointing a receiver in a writ petition under Article 226 of the Constitution of India?

7. The arguments which have been advanced before us have been fair, exhaustive and elaborate and have presented both sides of the case, and great industry appears to have gone into evolving them; and we must express our appreciation of the assistance given to us by all learned Counsel. The arguments in support of the competency of the appeal were made principally by the learned Advocate-General who appeared both for the appellants, the State of Maharashtra, in Appeal No. 499 of 1980, as also in his, capacity as the Advocate-General of Maharashtra; supplemented by Mr. Dhanuka who appeared for the appellants, the Union of India, the Collector of Central Excise and the Superintendent of Central Excise, in Appeal No. 479 of 1980, as also for the appellants, Filmistani Private Limited, in Appeal No. 308 of 1979, by Mr. B. A. Desai who appeared for the appellants, the General Manager of the High Explosives Factory at Kirkee and the Union of India, in Appeal No. 480 of 1980. Mr. R. L. Dalai who appeared for the respondents, the Municipal Corporation of Greater Bombay, the Municipal Commissioner for Greater Bombay and the Assistant Assessor and Collector, ''P'' Ward, and the learned Government Pleader Mr. V. N. Lokur who appeared for the respondents, the State of Maharashtra, in Appeal No. 308 of 1979, also supported the competency of the Appeals, though they contended that the appeal should fail on merits. Learned Counsel for various Intervenors, namely, Mr. K. K. Singhvi, Mr. R. J. Joshi, Mr. A. H. Desai, Mr. S.J. Deshpande and Mr. J.P. Deodhar, also supplemented the arguments. Though there was a general agreement that a right of appeal was available against the judgment of a single Judge in a writ petition under Article 226 of the Constitution filed on the Original Side, there wore divergent viewpoints canvassed with respect to the other points which arose for consideration. The arguments In support of the contention that no appeal was competent were advanced principally by Miss Jaising and Mr. Deshpande. Since from the nature of things a considerable part of the argument was devoted to the correctness or otherwise of the said judgment in the case of Shankar Naroba Salunke v. Gyanchand Lobhachand Kothari, it will he convenient first to refer to what the Court held in that case, before adumbrating the arguments advanced at the Bar. The matter before the said Full Bench arose because of an order passed on October 15, 1979 by a Division Bench at Nagpur consisting of Tulpule and Padhye JJ., in a batch of Letters Patent Appeals which were placed before it. All these Appeals were from decisions of a single Judge in writ petitions filed either under Article 226 or Article 227 or both Articles 226 and 227 of the Constitution, The said Division Bench felt a doubt about the correction of the decision in Jagannath Ganbaji Chikhale Vs. Gulabrao Raghobaji Bobde, , in which another Division Bench of this High Court had held that no appeal lay under Clause 15 of the Letters Patent against the Judgment of a single Judge in a writ petition filed under Article 227 of

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the Constitution, and accordingly passed an order requesting the papers to be placed before the learned Chief Justice for constitutiong a larger Bench to decide the question whether an appeal lay under Clause 15 of the Letters Patent against the decision of a single Judge in a petition filed under Article 227 as also in a petition filed under both Articles 226 and 227 of the Constitution.

8. We will now summarize below the conclusions reached by the said Full Bench, quoting as far as possible the language of the judgment itself:

(1) The Constitution of India brought about a fundamental change in the character of the High Courts which were in existence on that day (hereinafter referred to for the sake of convenience as the "existing High Courts"). In the words of the said Full Bench :

When we come to the stage of the Constitution we find that it purports to lay down an original institutional matrix of its own. It is not out of the historical ramparts that something is being put up, but a fundamental scheme, though mostly drawn on the historical feed back, is conceived and constructed ,.. Source of founding the High Court is thus changed and is now referable to the terms of paramount law of the Constitution. (para. 12 of the judgement.)

(2) "In the matters of powers of the High Court,,. there is clear evidence that the Constitution posits a break from that past and has made absolutely a new original and vital beginning. It follows as a matter of law that as far as origin, source of power and the conferment of constitutional authority, hereafter Letters Patent or earlier legislations have mere historical relevance and these cannot control the matters expressly provided." (para. 25 of the judgment).

(3) "As a result of this Charter (that is, The Indian High Courts Act, 1861). the then Imperial Sovereign issued Letters Patent for the establishment of High Courts." (Para 5 of the judgment).

The tequilur, therefore, in the words of the said Pull Bench is :

Not only the establishment, creation but the jurisdiction thus of the High Court had origin in the ordinary law made by Imperial Parliament. (para. 8 of the judgment).

(4) The phraseology of the Letters Patent, the Government of India Act, 1915, and the Government of India Act, 1985, "makes it evidently obvious that when these words ''original'' or ''appellate'' are used those have reference to legal jurisdictions of the High Court created by ordinary legislations as distinct from organic or constitutional jurisdiction not subject to such laws", (para. 7 of the judgment).

(5) "In the rising manhattan of the constitutional complex, High Court of the State is clearly an institution of such kind not subject with regard to the constitutional rights and obligations expressly conferred to any other ordinary law." (para 14 of the judgment).

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(6) "Unlike the past the existence of the High Court is no more dependable on the terms of any other ordinary legislations, for under constitutional mandate it is imperative that once the State as a political territory comes to be recognised by the Constitution it should have the High Court." (para. 17 of the judgment.)

(7) "Having declared that there shall be a High Court, the term which is denned in Article 366(14), Article 215 declares that such High Court shall be a Court of record and shall have all powers of such a Court including the power to punish for contempt of itself. This subserves the need to indicate that the High Court under the Constitution has an institutional permanance, its model being drawn from history." (para, 17 of the judgment).

(8) "The Constitutional jurisdiction conferred by Article 226 or by Article 227 cannot be equated with nor can form part of any of the jurisdictions that were and are within the contemplation of the Letters Patent." (Para. 11 of the judgment).

(9) "The High Court is intended to be a constitutional functionary so as to subserve the rule of law having direct sanction not to any imperial sovereign or ordinary past or present legislation but to the organic law of the Constitution... .For these purposes specific, special and extraordinary constitutional powers are enacted and those inhere in the establishment and organisation of the High Court. Thereunder the Court possesses a right and a duty to exercise the said jurisdiction for enforcement of fundamental rights and for furtherance of maintaining the rule of law subject to other conditions being satisfied." (para. 47 of the Judgment).

(10) "It is obvious that historical origin of Clause 15 lies in the Imperial device to provide an intra-Court appeal in the causes heard in original civil Jurisdiction exercised by the High Court acting by its Single Judge''s Court, all other appeals being differently provided." (para. 6 of the Judgment.)

(11) The fact that the Letters Patent could be amended by Ordinary legislation also shows that the Jurisdiction of the High Court under Articles 226 and 227 could not fall within the purview of the Letters Patent. In the words of the said Full Bench :

Amending process in its perspective always repelled construction to equate Clause 15 as providing for an universal remedy of appeal in High Court. (para. 8 of the Judgment.)

(12) Articles 226 and 227 contain in-built rule making power. In the language of the said Full Bench :

It is implicit in the conferment of these constitutional powers that the High Court is possessed of the power to regulate procedure for its exercise, by making its own rules. The authority to make rules after the conferment of the constitutional power need not be traced back to Section 108 of the Government of India Act, 1915. The authority resides in the conferring Articles 226 and 227 of the

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Constitution and it can be supplemented by the authority expressly conferred with regard to identical matters by Article 225. (para. 47 of the Judgment.)

(13) In a writ petition under Article 226 or under Article 227 "if in substance, the relief is of scrutiny of records and control of the subordinate Courts and Tribunals, then nonetheless notwithstanding the eventual relief and the character of the Jurisdiction, such exercise would fall within the expression ''revisional Jurisdiction'' or ''power of superintendence''. If we view the exceptions enacted in this Clause 15 over a course of period, the intention of which was clearly to exclude the exercise of such powers by the High Court, then such a meaning, in the context of new powers, furthers the interest of legal interpretation." (para. 55 of the Judgment)

Within Clause 15, therefore, there are inbuilt exceptions and that can cover the operational field over which the extraordinary powers of the High Court can be exercised under Articles 226 and 227 of the Constitution. (para. 58 of the Judgment.)

(14) "When...by virtue of the rules the Single Judge exercises the power conferred on the High Court under Articles 226 and/or Article 227, it follows that the power is exercised for the entire High Court having sanction of the procedural rules framed by the High Court itself." (Para. 46 of the judgment). In the language of the said Full Bench :

Principles of uniformity of approach should lead to the result that the power exercised by the High Court is exercised finally, whether by a Single Judge court or by a Division Bench Court. (Para. 58 of the judgment).

The result would, therefore, be that there should be no appeal from the decision of a single Judge in a proceeding under Article 226 or 227 or both to a Bench of two or more Judges of the same High Court.

(15) Applying the principle laid down by a Full Bench of this High Court in In Re: Prahlad Krishna Kurne, , in which it was held that successive writ petitions in the nature of hebeas corpus were not entertainable, the said Full Bench said :

The sequitur of this principle Is that the exercise of the power upon proper invocation is once and is finally exercised. If we were to posit a right of appeal, then the same cause or the same petition would be heard by the process of intra-court appeal in two successive stages, one on the admitted position of law in the realm of judicial discretion and the other in the realm of vested right of appeal. This is clearly antithetical. By interpretation, such a result need not be preempted. What is final when the High Court acts by its Division Bench Court should necessarily be final when it acts by its single Judge Court.(Para. 61 of the judgment.)

(16) The phrase "shall be heard and finally disposed of" in Rule 18 in Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, negative any appeal in a proceeding under Article 226 or 227 or both. In the words of the said Full

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Bench :

The word ''finally'' is a word of emphasis and a phrase of clarity in the context of the power which is now being exercised by the Single Judge Court. By that phrase, it is indicated that the High Court will act by the Single Judge and will act finally. In other words, the possibility of intra-court appeal is clearly excluded and eliminated.(Para. 62 of the judgment).

(17) "To the judgments rendered in exercise of the constitutional jurisdiction, Clause 15 of the Letters Patent does not apply. Even if for any other reason the clause is assumed to be attracted, the jurisdiction exercised under Rule18 is in substance, either with the aid of Article 220 or Article 227 or with both, in the context of our rules and the mutters made amenable thereunder, partakes in the character of supervisory jurisdiction or is in furtherance of the power of superintendence, a jurisdiction exercise of which is clearly excepted by Clause 15 and is not amenable to intra-court appeal in the High Court.(Para. OS of the judgment).

9. We will now sketch in broad outlines the contentions made before us at the Bar.

10. The contentions of the learned Advocate-General and other learned Counsel who supported him were:

(1) Article 225 of the Constitution of India not only preserved the jurisdiction possessed by existing High Courts as on the date of the commencement of the. Constitution of India but included within the jurisdiction to be exercised by the existing High Courts all other jurisdictions as were conferred upon them under the Constitution as also all other jurisdictions which may be conferred upon them thereafter by any amendment of the Constitution or by any Act of the appropriate legislature.

(2) So far as the three Chartered High Courts, namely, the High Courts of Bombay, Calcutta and Madras, are concerned, they possess the jurisdiction to issue high prerogative writs, and it was this jurisdiction which was taken as the model for conferring upon the High Courts the power to issue writs, orders and directions provided for by Article 226 of the Constitution. Thus, so far as the Chartered High Courts are concerned, the writ jurisdiction which was possessed by them prior to the commencement of the Constitution was made wider by Article 226, and so far as other High Courts were concerned, a new jurisdiction was conferred upon them by Article 2W.

(3) So far as Article 227 of the Constitution of India was concerned, it restored to the High Court the power of judicial superintendence u/s 107 of the Government Of India Act, 1915, hut made it wider and more broad-based.

(4) The fact that the power to issue writs and the power of superintendence were provided for by the Constitution and could not, therefore, be abridged, restricted or taken away by any Act made by Parliament or a State Legislature but could

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only be affected by an amendment of the Constitution, has no bearing upon the question whether an appeal lies under Clause 15 of the Letters Patent against the judgment of a single Judge of the High Court in a proceeding under either Article 226 or Article 227. The answer to that question depends upon the terms of Clause 15 itself.

(5) Clause 15 of the Letters Patent is general in its terms and confers a right of appeal against the judgment of a single Judge in all matters, whether original or appellate, except in respect of such matters which are specially excluded by the terms of that clause. Under Article 872 of the Constitution of India read with Clause (10) of Article 860, the Letters Patent and the Rules made by the High Court which were in force at the commencement, of the Constitution continued in force, and therefore the right of appeal under Clause 15 of the Letters Patent continued and was available against a judgment of a single Judge in a proceeding under Article 226.

(6) The right of appeal relates to the manner or exercise of the power vested in the High Court, and it does not relate to the nature or content of the power itself. A provision that a decision given in the exercise of a power vested in the High Court is subject, to appeal does not relate to the nature or content of that power but to the manner of its enforcement.

(7) The right of appeal is a vested right and can be taken away only expressly or by necessary implication, and the right of appeal granted by cl, 15 of the Letters Patent in respect of all judgments given by a single Judge, except in matters expressly excluded by that clause, has not been taken away either by the Constitution of India or by any legislation or by necessary implication flowing from the. Constitution or any legislation. On the contrary, by necessary implication flowing from the relevant provisions of the Constitution this right of appeal has been expressly preserved.

(8) Articles 220 and 227 of the Constitution of India are different in their nature, both historically and in their operation, and the power of issuing writs conferred by Article 220 cannot be equated with the power of superintendence under Article 227. An appeal against an order made in the exercise of the power of superintendence u/s 107 of the Government of India Act, 1915, was expressly barred by Clause 15 of the Letters Patent. On the repeal of the Government of India Act, 1915, by the Government of India Act, 1935, by reason of the provisions of Sub-section (1) of Section 38 of the Interpretation Act, 1889, which corresponds to Section 8 of the General Clauses Act, 1897 what CM me to be excluded from the right of appeal conferred by Clause 15 of the Letters Patent was an order made in the exercise of the High Court''s power of superintendence u/s 224 of the Government of India Act, 1935, and now by the same process of interpretation or on fundamental principles of construction of statutes underlying the said Section 38 (1) of the Interpretation Act and the said Section 8 of the General Clauses Act, an order made by a single Judge in the exercise of the power of superintendence under Article 227.

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(9) An appeal is a continuation of the original proceeding and cannot be described as a separate subsequent application made to the High Court.

11. Mr. A. H. Desai with Mr. B. A. Desai contended that an appeal lay not only against the judgment of a single Judge given in a proceeding under Article 226 of the Constitution but also given in a proceeding under Article 227. They submitted that the power of judicial superintendence which the High Courts possessed u/s 107 of the Government of India Act, 1915, was taken away by Section 224 of the Government of India Act, 1935, and, therefore, the exception with respect to an order made in the exercise of the power of superintendence, u/s 107 of the Government of India Act in Clause 15 of the Letters Patent became redundant and inoperative and did not survive, and, therefore, on the canon of construction of statutes enunciated in Section 38 of the Interpretation Act and Section 8 of the General Clauses Act the words "made in the exercise of power of superintendence under the provisions of Article 227 of the Constitution" could not be substituted in Clause 15 of the Letters Patent for the words "made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act."

12. Mr. Deshpande also contended that an appeal lay against the judgment of a single Judge given in a proceeding under Article 227 of the Constitution, his argument being that Articles 226 and 227 stood on the same footing, Article 227 being, in fact wider than Article 226; and if an appeal could lie against an order made in a proceeding under Article 226, it must of necessity also lie in, a proceeding under Article 227.

13. Miss Jaising and Mr. Deshmukh were the principal protagonists of the incompetency of an appeal under Clause 15 of the Letters Patent against the judgment of a single Judge of the High Court in a proceeding either under Article 226 or 227 of the Constitution. Miss Jaising submitted that what was appealable was the judgment of a single Judge of the High Court "pursuant to Section 108 of the Government of India Act". According to her, neither Section 38 of the Interpretation Act nor Section 8 of the General Clauses Act applies to the interpretation of Clause 15 of the Letters Patent. She further urged that Article 225 did not deal with the same subject-matter as Section 108 of the Government of India Act, and, therefore, the words "pursuant to Article 225 of the Constitution" could not be read into Clause 15 of ''the Letters Patent for the words "pursuant to Section 108 of the Government of India Act". According to both Miss Jaising and Mr. Deshmukh the power conferred upon the High Court by Articles 226 and 227 were new, extraordinary, constitutional powers and in exercising such powers the High Court exercised a new, extraordinary, constitutional jurisdiction different from all the other jurisdictions the High Court possessed or possesses under other laws. These powers were not at any time within the framework of the Letters Patent and were not comprehended within their scope and ambit. Mr. Deshmukh also contended that R. 18 of chap. XVII of the Bombay High Court Appellate Side Rules, 1960, itself showed that the

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judgment of a single Judge in a proceeding under Article 226 or 227 or both Articles 226 and 227 was not subject to appeal under Clause 15 of the Letters Patent.

14. Before we deal with the above contentions it will be convenient to dispose of certain preliminary objections raised by Miss Jaising and Mr. Deshmukh to the constitution of this Special Bench. The first preliminary objection was that the said Full Bench had given leave to appeal to the Supreme Court under Sub-clauses (a) and (b) of Clause (1) of Article 133 of the Constitution from its judgment in the said Letters Patent Appeals Nos. 3, and 17 of 1979 and 34 of 1980 and that, therefore, it was not competent to this Special Bench to hear these matters. There is no substance in this objection. This Special Bench is not sitting in appeal on the judgment of the said Full Bench. The questions which have arisen for determination before this special Bench have arisen in independent proceedings filed on the Original Side of this High Court, while the decision of the said Full Bench was given in proceedings filed on the Appellate Side of the High Court. Further, a question in an appeal pending before the Supreme Court, assuming the parties have in fact filed such appeal in pursuance of the leave given to them, cannot preclude the same question from being considered or decided in another matter which arises in the High Court.

15. The next objection was that neither the Division Bench consisting of Madon and Shah JJ., nor the Division Bench consisting of Madon and Kania JJ., had any power to make an order of reference to a larger Benchi. It was submitted that under R. 28 of the Original Side Rules, 1980, it is only a single Judge who can make a reference to a Bench of two or more Judges and a Division Bench of two Judges could not make such an order, there being no rule empowering it to do so. This objection is equally unsustainable, The two Division Benches have not directed these appeals to be heard by a larger Bench nor have they themselves referred any question to the larger Bench. They have merely given directions for the papers in these matters to be placed before the Chief Justice to constitute a larger Bench for the determination of the questions arising therein. Thereupon) it was for the Chief Justice to constitute a larger Bench if he so thought fit, which in the instant appeals he has done. Rule 26 of the Original Side Rules, 1980, inter alia provides that

A Court for the exercise of the Original Jurisdiction of the High Court on its several sides may be held before one or more Judges of the High Court.

16. Rule 28 provides as follows:

28 Reference to two or more Judges.

If it shall appear to any Judge, either on the application of a party or otherwise, that a suit or matter can be more advantageously heard by a bench of two or more Judges, he may report to that effect to tile Chief Justice, who shall make such order thereon as he shall think fit.

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If the original jurisdiction of this High Court is to be exercised by one or more Judges, it is clear that the report under R. 28 can be made by on(c) Judge or more Judges, even though the words used in R. 28 are "any Judge". u/s 13 of the General Clauses Act, 1897, the words in singular include the plural and vice versa. u/s 20 of that Act rules made under an Act have the same respective meanings as in the Act conferring the rule-making power. Similar provisions are to be found in Sections 13 and 20 of the Bombay General Clauses Act, 1904. As the General Clauses Act applies for the interpretation of Central Acts and Regulations and to rules, made thereunder and the Bombay General Clauses Act applies to all Bombay or Maharashtra Acts and the rules made thereunder, it might be debatable whether these provisions apply to the construction of the rules framed by this High Court in the exercise of powers conferred upon it by Article 225 of the Constitution. However, a reference to the Interpretation Act, 1889, makes it clear that Section 13 of the Central Act as also of the Bombay Act do not lay down any new rule of construction. Section 1 of the Interpretation Act lays down the same rule of construction as that contained hi the said Section 13 of the Central and Bombay General Clauses Acts. The Interpretation! Act is divided into two parts, Sections 1 to 11 falling under the heading "Re-enactment of existing Rules", the remaining sections falling under the heading "New General Rules; of Construction". Thus, it is clear that the rule of interpretation as to number enacted in Section 1 of the Interpretation Act and in Section 13 of the Bombay and Central General Clauses Acts is not a new rule of interpretation but a rule of interpretation which had been, laid down and followed by Courts prior to its receiving statutory recognition by the Interpretation Act. Thus, the words "any Judge" occuring hi R. 28 would include "any Judges", whether two or more, exercising original jurisdiction of the High Court. The two Division Benches were hearing appeals from orders passed by Judges exercising original jurisdiction of this High Court. This they were doing in pursuance of R. 876 of the Original Side Rules, 1980. Rules 26 to 28 occur in chap. I of Part II of the Original Side Rules, 1980, while R. 876 occurs in chap. LII of the said Part II. Part II is headed "RULES RELATING TO THE JURISDICTION OF THE HIGH COURT ON ITS ORIGINAL SIDE". For the purposes of the Original Side Rules, 1980, the hearing of appeals from orders passed in the exercise of original jurisdiction is treated as "Relating to the Jurisdiction of the High Court on its Original Side". It is also pertinent to note that Rs. 28 uses the words "a suit or matter" and not just the words "a suit". The word "matter" would cover an appeal. Assuming that R. 28 does not apply to a Division Bench hearing an Original Side appeal, there is nothing In the Rules or in law to prevent such Division Bench from making a request to the Chief Justice. Whether the request should be granted or not would be for the Chief Justice to decide.

17. The third and the last objection was that it was not open to the Chief Justice to constitute a Bench of more than two Judges to hear an appeal. This objection is equally without any substance. Rule 876 of the Original Side Rules, 1980, provides as follows:

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876. Appellate Court.

The Chief Justice may, from time to time, constitute a bench of not less than two Judges (in this and the next succeeding chapter referred to as ''the Appellate Court'') to hear appeals and applications in appeals from decrees or orders passed by Judges exercising Original Jurisdiction of the High Court.

Thus, under the said R. 876 the Chief Justice has the power to constitute "a bench of not less than two Judges". What the said Rule lays down is the minimum number of Judges who must hear an appeal from a decree or order passed by Judges exercising original jurisdiction of the High Court. The said Rule does not specify the maximum number of Judges who can hear such appeals, and it is for the Chief Justice to determine how many Judges should in any particular appeal constitute a Bench for hearing it. It was also submitted that the Bench to be constituted under the said Rule must be one constituted to hear all appeals and not only some of them. This submission is equally without any validity. This power of the Chief Justice has always been recognized. To cite but one instance in Hatimbhai Hassanally v. Framroze Eduljee Dinshaw I. L.R. (1927) 51 Bom. 516, 29 Bom. L.R. 498 s.c. , a Full Bench of seven Judges was constituted by the Chief Justice in similar circumstances to hear the question of the maintainability of a suit filed on the original side which had arisen in an appeal from a final decree in a mortgage suit, which appeal was being heard originally by a Bench of two Judges. On the rules of interpretation mentioned while dealing with the second preliminary objection the word ''appeals'' would include any particular appeal or appeals, and from it, it would equally follow that it would include any question arising in any appeal.

18. The main controversy before us is whether Articles 226 and 227 confer upon the existing High Courts a wholly new jurisdiction having no relation whatever to the jurisdiction of the High Courts under other laws and, therefore, no appeal lies to the High Court against the judgment of a single Judge in a proceeding under either or both of these Articles. The determination of this controversy involves an inquiry into the jurisdiction possessed by the existing High Courts at the commencement of the Constitution of India, the nature and sources of this jurisdiction and the power of the High Courts to regulate the exercise of their jurisdiction, as also an inquiry into the nature of proceedings under Articles 226 and 227 and whether these two Articles stand as a separate unit by themselves or are a part of an entire scheme for the constitution of the High Courts in the States contained in chap. V of Part VI of the Constitution. We are not concerned here with any High Courts, other than this High Court, but as will be presently pointed out, historically the three High Courts, namely, the High Courts of Bombay, Calcutta and Madras known as the Chartered High Courts, have always stood on a different tooting from other High Courts.

19. Before considering the arguments advanced at the Bar, it is necessary first to trace briefly the events which led to the establishment and erection of this High Court and to determine the different jurisdictions it possessed at the

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commencement of the Constitution. The origin and history of this High Court and the sources of its different jurisdictions arc to be found in several books and decisions. The two books which give the most useful information are "History and Constitution of Courts in India" by Herbert Cowell, which formed the subject-matter of the Tagore Law Lectures delivered in 1872, and "The First Century of British Justice in India'''' by Sir Charles Fawcett, a former Judge of this High Court, which book bears an official imprimatur as it was published in 1934 under "the patronage of His Majesty''s Secretary of State for India in Council." The principal amongst the decisions on this subject is Naoroji Beramji v. Henry Rogers (1866) 4 B.H.C.R. 1. In that case Westropp J., who delivered the judgment on behalf of Couch J., and himself, has with great erudition traced the history of judicial institutions in this city and the Bombay Presidency culminating in the setting up of this High Court. It can also be gathered from the various Charters and Letters Patent granted by the British Crown and the various statutes passed by the British Parliament to which we will refer, quoting from them where necessary, and supplying the emphasis where required.

20. Any attempt to look beyond the British days for this purpose is futile because the legal system and the legal institutions which came to be established in the city of Bombay have no connection with any law which was, applied to this city or with any legal institution which administered it, either by the Portuguese before the cession of the Island of Bombay to British Crown or before the Portuguese acquired possession of the Island. The Charter of Queen Elizabeth I (43rd Eliz.) granted on December 31, 1601 created the Governor and Company of the Merchants of London trading into the East Indies (hereinafter referred to as "the London Company") a body corporate. Amongst other things the Charter empowered the London Company to make and enforce laws

for the good government of the said Company, and of all factors, masters, mariners, and other officers employed or to be employed in any of their voyages, and for the better advancement and continuance of the said trade and traffic." Provided that such laws "be reasonable, and not contrary or repugnant I o the laws, statutes, or customs of this Our Realm.

As Westropp J., has pointed out in Naoroji Beramji v. Henry Rogers, at p. 28, this power to legislate contained no express reference to factories or territories. The Charter was renewed from time to time. It was confirmed in nearly identical language by James I on May 31, 1609 by Letters Patent (7 Jac. I) and again by a Charter granted on February 4, 1622 (20 Jac. I). This Charter of 1622 empowered the London Company to chastise and correct all English persons residing in the East Indies and committing any misdemeanour, either with martial law or otherwise. On his restoration Charles II confirmed both the above Charters by Letters Patent granted on April 3, 1661 (13 Car. II). The Charter of 1661 further contained a very important provision, namely:

That the Governor and his Council of the several and respective places where the said Company have or shall have any factories or places of trade, within the said

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East Indies, may half power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the lawn of this Kingdom., and to execute Judgment accordingly. And in case any crime or misdemeanour shall be committed in any of the said Company''s factories in the said East Indies where judicature cannot be executed as aforesaid, for want of a Governor and Council, there, then, and in such case it shall and may be lawful for the chief factor of that place and his Council, to transmit the party, together with the offence, to such other plantation, factory, or fort, where there is a Governor and Council, where justice may be executed, or into this Kingdom of England, as shall be thought most convenient, there to receive such punishment as the justice of the offence shall deserve.

Thus, the London Company got under this Charter the power to judge not only its own servants but all persons who should live under the London Company in "all causes, whether civil or criminal," according to the laws of Great Britain, This power was exercisable by the London Company not only in the places where the London Company had factories or places of trade but also in those places where the London Company may have in future any factories or places of trade. Thus, this was the first Charter that actually created Courts of Justice in British India, making the London Company the Courts of Justice in all civil and criminal causes and further directing that the law to be administered in these Courts, both as to the persons belonging to the London Company as also to persons who should live under them, was to be the law of Great Britain. This Charter has been referred to by Sir Charles Gray C. J., in Jebb v. Lefevre Clarke''s Addl. Cases 56, 58, s.c., and by Lord Kingsdown in The Advocate General of Bengal v. Ranee Surnomoye Dossee 9 Moore''s I.A. 426.

21. In the same year in which the said Letters Patent were granted to the London Company, namely, in the year 1661, Charles II married Catharine of Braganza, the sister of Alfonso VI, King of Portugal. By the marriage treaty dated June 23, 1661 Alfonso VI ceded to the British Crown as dowry the city and castle of Tangier and Bombay. The eleventh article of this treaty dealt with the Island of Bombay. Under it the King of Portugal gave, transferred, granted and confirmed to the Crown of Great Britain

the port and island of Bombay, in the Kast Indies, with all the rights, profits, territories, and appurtenances whatsoever thereunto belonging, and, together with the income and revenue the direct, full and absolute dominion and sovereignty of the said Port, Island, and Premises, with all their royalties, freely, fully, entirely, and absolutely.

It is pertinent to note that two months and twenty days before the date of this treaty the laws of England had been introduced by the said Letters Patent dated April 3, 1661 as the guide in all cases, civil and criminal, in the factories or places of trade in India which the London Company then had or thereafter might have. The Portuguese Viceroy of Goa, Don Antonio de Mello e Castro, who

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exercised viceroyalty over all the Portuguese possessions in India including Bombay, realized the potentialities of Bombay as a harbour far more than did his master, and temporized and put off handing over possession of Bombay to the representatives of the British Crown until 1668.

22. Upon obtaining possession of the Island of Bombay, Charles II proceeded by a Charter dated March 27, 1668 (20 Car. II), which recited the said Letters Patent of 1661 and the said marriage treaty, to "give, grant, transfer, and confirm" to the London Company the Port and Island of Bombay "with all the rights, profits, territories, and appurtenances thereof whatsoever, and all and singular royalties, revenues, rents, customs, castles, forts, buildings, and fortifications, privileges, franchises, preeminances, and hereditaments whatsoever", etc., in as large a manner as the Crown of England enjoyed or ought to enjoy them, under the grant of the King of Portugal in the treaty of 1661, "and not further or otherwise," and created the London Company "the true and absolute Lords and Proprietors of the Port and Island and premises aforesaid, and of every part and parcel thereof," which appertained to the Crown of England by force of the grant of the King of Portugal, "and not further or otherwise" (saving the allegiance due to the Crown of England, and its royal power and sovereignty over its subjects in and over the inhabitants of the port and island), "to have, hold," etc., the said Port and Island, etc., "unto them," the said Company, "to the only use of them,'' the said Company, "their successors and assigns for evermore, to be holden of Us, Our heirs and successors as of the Manor of East Greenwich in the County of Kent, in free and Common Seeage, and not in Capite, nor by Knight''s Service," at the rent of ten pounds yearly payable to the Crown. The important provision of this Charter so far as we are concerned was the one relating to making of laws and the establishment of Courts. It was

to ordain, make, establish, and under their common seal to publish, any laws, ordinances, and constitutions whatever, for the good government and other use of the said fort and island of Bombay and the inhabitants thereof,

and also

to impose pains, punishments, and penalties, by fines," etc., "for the observation of the same laws," etc. "so always as the said laws, Ac. pains. &c., be consonant to reason and not repugnant or contrary, but as near as may be agreeable, to the laws of the this our Realm of England.

This Charter further provided that it should be lawful for the /London Company

by themselves or by their Governor or Governors, officers, and ministers, etc., according to the nature and limits of their respective offices and places within the said port and island of Bombay, the territories and precincts thereof, to correct, punish, govern, and rule all and every the subjects of Rs. Our heirs and successors, that now do or at any time hereafter shall inhabit within the said port and island, &c. according to such laws, etc. as by tht said Company, in any

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general Court or Court of Committees as aforesaid, shall be established, and to do all and every other thing and things which upto the Complete establishment of Justice do belong, by Courts, Sessions, form of judicature, and manner of proceedings therein, like unto those established and used in this our realm of England, although in these presents express mention be not made thereof, and by Judges and other officers by the Company, or by the Chief Governor or Governors of the said port and island of Bombay, to be delegated to award process, hold pleas, judge and determine all actions, suits, and causes whatsoever, of any kind or nature whatsoever, and to execute all and every such Judgment, so always as the said laws, ordinances, and proceedings be reasonable, and not repugnant or contrary, but as near as may be agreeable, to the laws, statutes, government, and policy of this Our Kingdom of England and subject to the provisos and savings herein.

This was really the Charter which conferred jurisdiction upon the London Company to establish Courts in the Island of Bombay. The earlier Letters Patent of 1661, which conferred jurisdiction upon the Governors and their Councils to judge all persons belonging to the London. Company or who should live under them, could not be said to be applicable to Bombay because Bombay was not a factory such as the London Company had at Surat or on the Hooghly or any other parts of India. Bombay was not held by the London Company from the Mogul or any other Indian ruler. This was the reason given by Lord Kingsdown in The Advocate General of Bengal v. Ranee Sursomoyes Dossee for holding that the said Charter of 1661 did not apply to Bombay. The King of Portugal had full sovereignty over the Island of Bombay which he had ceded to Charles II, and thus the British Crown had complete sovereignty over the Island of Bombay unlike the other places in India where it had established its factories. Thus, the jurisdiction of the London Company to establish Courts and administer the laws of England in Bombay stemmed from the Charter of 1668.

23. In 1669 the London Company sent out detailed instructions for establishing a Court of Judicature at Bombay, but the Court was not inaugurated -until August 8, 1672. An inferior Court was established to take cognizance of all disputes under 200 xeraphins. Appeals from the decisions of this inferior Court lay to the superior Court. The decisions of the superior Court were to be final and without appeal except in causes of the greatest necessity. (See Naoroji Beramji v. Rogers, at pp. 48-49).

24. The Charter 28 Car. II recited and confirmed the Letters Patent of 1661 and the Charter of 1668. The Charter 35 Car. II dated August 9, 1683 confirmed the earlier Charters granted by Queen Elizabeth 1, James I, and Charles II himself, and inter alia established a Court of Judicature to be held at such places, forts, plantations or factories upon the coast, as the London Company should from time to time direct, to consist of "one person learned in the civil law, and two merchants," to be appointed by the London Company, with power to determine all mercantile and maritime cases, and trespasses, injuries and wrongs

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committed upon the high seas, or in the trading limits of the London Company in Asia, Africa and America according to the rules of equity and good conscience, and according to the laws and customs of merchants." The next year by a despatch dated April 7, 1684 from the Court of Directors to the President and Council at Surat a Judge of the Admiralty Court in the East Indies was appointed. James II by his Charter 2 Jac. II. dated April 12, 1686 confirmed the Charter granted by his elder brother, Charles II. When William III and Mary II ascended the throne they confirmed the former Charter by Charter 5 Wm. and Mary dated October 7, 1693. Under it the laws etc. which the London Company was empowered to make were not to be "contrary or repugnant to the laws, statutes or customs" of England.

25. Meanwhile the London Company''s rivals had formed a new Society (hereinafter called "the English Company") and had demanded a Charter, which was granted by William III by Charter 10 Wm. Ill dated September 5, 1698. This Charter contained provisions for establishing Courts to try mercantile and maritime causes similar to those established by the Charters of 1683 and 1686 granted to the London Company. An Act of Parliament of 1698 ultimately granted the monopoly of Indian trade to those who contributed to it a loan of ? 20,00,000. The London Company gave a loan of ? 3,15,000 and retained its supremacy, keeping the forts and privileges in India, but the English Company gained a foothold in the Indian trade. Rivalry between the two Companies however, continued and was finally resolved in 1702, when by on Indenture Tripartite dated July 22, 1702 between Queen Anne and the London Company and its rival, the English Company, the two Companies were united under the name of the United Company of Merchants trading to the East Indies (hereinafter referred to as "the East India Company"), and the Queen sanctioned and agreed to confirm the grant and conveyance by the London Company to the English Company of the port and Island of Bombay. By Indenture Quinquepartite dated July 22, 1702 the London Company sold and assigned to the English Company inter alia the port and Island of Bombay together with all the rights, appurtenances, prerogatives, royalties, etc., of the London Company thereto as also the factories at Surat and other places in India.

26. By Letters Patent granted by George I dated September 24, 1726 (13 Geo. I) a corporation consisting of a Mayor and nine Aldermen was established at Madras, Bombay and Calcutta and was constituted into a Court of Record by the name of the Mayor''s Court. The Mayor''s Courts were authorized "to try, hear, and determine all civil suits, actions, and pleas between party and party" that should or might arise, so far as Bombay was concerned, within the Island of Bombay. By the same Charter the Governor and Council were constituted a Court of Record in the nature of a Court of Oyer and Terminer, with power to administer criminal justice, in all cases except high treason, "in the same or in the like manner as is used in that part of Great Britain called England", with the assistance of a grand and petty jury, and were empowered, with the sanction of the Court of Directors of the East India Company to make by-laws, rules and

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ordinances for the good government and regulation inter alia of the inhabitants of these three towns, places and factories and to impose reasonable pains and penalties upon offenders against them, provided that such by-laws, rules and ordinances, and all pains and penalties thereby to be imposed, be agreeable to reason, and not contrary to the Laws and Statues of England. The Mayor''s Court had also authority to grant probate and administration. The Charter 1 Geo. II dated November 17, 1727 granted to the East India Company the fines etc. imposed by the Mayor''s Court. The East India Company thereafter petitioned the Crown to accept surrender of the Charters of 1726 and 1727 and to grant a fresh Charter in lieu thereof. Among the grounds mentioned in the petition was that it had been found by experience that there were some defects in the Charter of 1726. This petition was granted and the surrender of the two Charters made by an Indenture January 6, 1753. A fresh Charter was granted to the East India Company by 26 Geo, II dated January 8, 1753 under which the Mayor''s Court''s at Madras, Bombay and Calcutta were re-erected as Courts of Record with similar jurisdiction. This charter also constituted Courts of Requests to try suits on causes of action not exceeding five pagodas.

27. For the first time the British Parliament asserted its authority and control over the East Indian Company''s activities both in India and in England by the Regulating Act of 1773 (St. 13 Geo. III c. 63). Under this Statute the Governor of Bengal became the Governor-General in Council with a certain amount of control over the Presidencies of Bombay and Madras (See H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, The appointment of the Governor-General had to be approved by the Crown. This Statute also empowered the Crown to establish a Supreme Court in lieu of the Mayor''s Court at Fort William, to consist of a Chief Justice and three Puisne Judges. Accordingly, by Charter 14 Geo. III dated March 26, 1774 the Supreme Court was established at Fort William. The Statute 37 Geo. Ill c. 142, limited the number of Puisne Judges of the Supreme Court at Fort William to two and further authorized the Crown to establish at Madras and Bombay, in lieu of "the Mayor''s Courts, Recorder''s Courts, consisting of the Mayor, three Aldermen and a Recorder. By a Charter dated February 20, 1798 (38 Geo. III) Recorder''s Courts were established both at Madras and Bombay, with jurisdiction similar to that of the Court of King''s Bench in England, "as far as circumstances would admit". An equitable jurisdiction similar to that of the Court of Chancery in England was given to the Recorder''s Courts as also ecclesiastical jurisdiction, which included power to grant probates and letters of administration, and admiralty jurisdiction. The Recorder''s Courts were also made Courts of Oyer and Terminer to administer criminal justice as in England "or as nearly thereto as the condition and circumstances of the pleas and persons would admit."

28. The Statute 4 Geo. IV c. 71, authorized the Crown to create for Bombay and its dependencies a Supreme Court with the same powers and subject to the same restrictions, as those which the Supreme Court for Fort William and its dependencies then had. Accordingly, by Charter 4 Geo. IV dated December 8,

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1823 the Supreme Court at Bombay was erected. We will consider later the provisions of this Charter.

29. We will now consider the position for the rest of the Bombay Presidency. The jurisdiction of the East India Company''s law Courts was, until 1765, confined to the factories of the Company and their branches. In 1765, Robert Give secured, or rather exacted, the Dewanny of Bengal, Bihar and Orissa from the titular Mogul Emperor in Delhi. In this delegated capacity, the East India Company derived its title to administer the revenue and civil affairs of these provinces, and established in Bengal, Bihar and Orissa, civil and revenue Adalats. The delegated capacity was a mere fiction. The real source of the East India Company''s authority to administer these provinces was the sword and not the farman of the Mogul Emperor, Shah Alum. The Regulating Act of 1773 vested in the Governor-General in Council the whole civil and military government of the Presidency of Bengal, as also the government of the territorial acquisitions and revenues in the kingdom of Bengal, Bihar and Orissa which were Dewanny lands. By an Act of 1781 (21 Geo. Ill c. 70) the Governor-General in Council was empowered to frame regulations for the "provincial Courts and councils" which could be disallowed within two years by the Court of Directors and the Secretary of State. Thus, from 1781 the legislative powers of the Governor-General in Council were derived from two Parliamentary statutes-the Regulating Act of 1773 and the Act of 1781 The powers under the two Acts, however, differed in respect of the territorial extent, the ambit of subject-matters of legislation and the mode of their existence. The power under the Regulating Act was intended to apply to the East India Company''s settlement at Fort William (Calcutta) and other places subordinate thereto, while the Act of 1781 authorized the making of regulations for the "territorial acquisitions of Bengal, Bihar and Orissa", that is, the Dewanny kingdoms. Although the Regulating Act clearly delimited the territorial extent of the legislative powers which were granted thereunder, it was at times interpreted to include even the areas under the Dewanny kingdom; and though in respect of the subject-matters, the powers of the Governor-General in Council under the Regulating Act were of wide amplitude enabling them to make laws for "the good order of civil government of the settlement and of all factories and places subordinate thereto", the Act of 1781 gave power only to legislate for the provincial Courts and Councils which, literally interpreted, meant only making rules prescribing the procedure and practice of the Courts, In fact, the Governor-General in Council made most of the Bengal Regulations under the 1781 Act. The British Parliament also seems to have acquiesced in this extended interpretation put on the 1781 Act, for in an Act of 1797 (37 Geo. HI, c. 142), the British Parliament referred to the power under the 1781 Act as if it were one of making a regular code to affect the personal and proprietory rights of the Indian subjects and others amenable to the East India Company''s Courts. Subsequently, the local government of Madras in 1800 by Statute 39 Geo. III, c. 79 and the local government of Bombay in 1807 by Statute 47 Geo. Ill, c. 68 were invested within the territories subject to their government with the same legislative powers and

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exercisable in the same manner as had previously been given to and exercised for Bengal by the Governor-General in Council.

30. Meanwhile in about 1797 the Governor-General of Bengal had directed the Government of Bombay to set up Adalats, both Dewanny and Nizami, in those territories. Accordingly, by Regulation II of 1827 Zilla or District Courts and the Sudder Dewanny Adalat were established, and the Sudder Dewanny Adalat was invested with civil jurisdiction over all territories hi the Presidency of Bombay, except the city of Bombay, and was empowered to hear and determine appeals against decrees and orders passed by the Zilla Courts. Regulation XIII of 1827 constituted Zilla Criminal Courts and the Sudder Foujdarry Adalat. The supreme criminal jurisdiction over the territories in the Presidency of Bombay, except the Town and Island of Bombay, was vested in the Sudder Foujdarry Adalat, which was empowered to hear appeals against the decisions of Zilla Courts.

31. Statute 17 Geo. III c. 68 of 1813 enlarged the powers of all the three Councils, viz., of Bengal, Madras and Bombay, but subjected to greater control by the British Parliament. Statutes 3 & 4 Wm. IV c. 85 of 1833 introduced important changes in the system of legislation in India, vesting the sole legislative power in India in the Governor-General in Council. The existing powers of the Councils of Madras and Bombay to make laws were superseded and they were merely authorized to submit to the Governor-General in Council drafts or projects of any law which they might think expedient. After considering such drafts and projects the Governor-General in Council was to communicate his decision thereon to the local government which had proposed them. This Statute expressly saved the right of the British Parliament to make laws for India. All laws made previously to this Statute were called ''Regulations'', but laws which were made in pursuance of the Statute of 1833 were known as ''Acts''. Statute 16 & 17 Vict. c. 95 of 1853 renewed the Charter granted to the East India Company by the Statute of 1833. Under this Statute the territories in the possession and under the government of the East India Company were continued under such government in trust for the Crown until the British Parliament should otherwise provide. This Statute also expanded the Legislature and set up Legislative Councils which included some Judges.

32. From about 1852 the Parliamentary Committee for East Indian affairs was considering a proposal to consolidate the Supreme and Sudder Courts into one Court in each of the three Presidencies of Bengal, Madras and Bombay in the interest of the public administration of justice. Meanwhile the events of 1857 led to the passing of the Government of India Act, 1858 (21 & 22 Vict. 106). Under that Act the government of the territories in the possession or under the government of the East India Company and all powers in relation to government vested in or exercised by the East India Company ceased to be vested or exercised by it and became vested in the British Crown, and India was thenceforth to be governed by and in the name of the Queen of England. By this Act all existing Acts and Provisions concerning India and all existing Orders,

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Regulations and Directions by the Court of Directors or the Commissioners for the Affairs of India were continued in force. This Act, however, did not make any provision for the setup of the new Courts, the proposal with respect to which had been under consideration of the Parliamentary Committee for East Indian Affairs. An Act for that purpose was passed by the British Parliament in 1861, that being the Indian High Courts Act, 1861 (St. 24 & 25 Vict. c. 104) referred to in many judgments as the Charter Act. Under it, the Crown was authorized to erect and establish the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay for these three Presidencies, to consist of a Chief Justice and a certain number of other Judges. In pursuance of this Act, Letters Patent were issued in identical terms on different dates establishing these three High Courts. Because these three High Courts were established in pursuance of power given by the Charter Act, 1861, they are known as "Chartered High Courts". So far as the Bombay Presidency is concerned, Letters Patent dated June 26, 1862 were issued establishing a High Court for the Presidency of Bombay, which were replaced by the Letters Patent dated December 28, 1865. In 1865, the Indian High Courts Act, 1865 (28 & 29 Vict. c. 25) was passed by the British Parliament. We are not concerned with this Act.

33. The relevant provision of the Letters Patent of the Supreme Court and of the Indian High Courts Act, 1861, and of the two Letters Patent issued in respect of the Bombay High Court now require to be noticed.

34. Under the Letters Patent of 1823 establishing the Supreme Court of Judicature at Bombay the Supreme Court was by Clause 1 of the said Letters Patent created and constituted to be "a Court of Record" and was to consist of a Chief Justice and two Judges. Clause 5 of the Letters Patent is material for our purposes and requires to be reproduced. It is as follows:

5. The Court invested with a jurisdiction similar to the Jurisdiction of the Kings Bench in England.

AND it Is our further will and pleasure, That the said Chief Justice and the said Puisne Justices shall, severally and respectively, be, and they are, all and every of them, hereby appointed to be Justices and Conservators of the Peace, and Coroners, within and throughout the Settlement of Bombay, and the Town and Island of Bombay, and the limits thereof, and the Factories subordinate thereto and all the territories which now are or hereafter may be subject to, or dependent upon, the Government of Bombay, aforesaid, and to have such jurisdiction and authority as our Justices of our Court of King''s Bench have and may lawfully exercise, within that part of Great Britain called England, as far as circumstances will admit.

(Italics OUTS).

Clause 23 of the said Letters Patent extended the jurisdiction, powers and authorities of the Supreme Court of Judicature at Bombay to all British subjects residing within any of the factories subject to or dependent upon the Government

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of Bombay, and conferred full power and authority upon the Supreme Court to hear and determine all suits and actions whatsoever against any of such subjects, arising in territories subject to, or dependent upon, or which thereafter was to be subject to or dependent upon the Government of Bombay, or within any of the dominions of the Native Princes of India in alliance with the Government of Bombay, or against any person or persons who, at the time when the cause of action arose, had been employed by or should have been directly or indirectly in the service of the East India Company, or any of the subjects of the British Crown. This clause also conferred upon the Supreme Court of Judicature at Bombay all the powers possessed by the Mayor''s Court and the Recorder''s Court. Clause 24 conferred power upon the Supreme Court of Judicature at Bombay to hear and determine all suits and actions that might be brought against the inhabitants of Bombay, subject to certain provisions with respect to the laws to be applied to Hindus and Muslims. By Clause 25 the jurisdiction of the Court inter alia was expressly barred in all revenue matters. Clause 26 conferred power upon the Supreme Court to punish by fine, imprisonment or other corporeal punishment witnesses who committed contempt of Court by refusing to appear, or wilfully neglecting to appear and be sworn, or to be examined and subscribe his or her deposition. By various clauses equitable jurisdiction of the Court of Chancery in Great Britain, criminal jurisdiction as a Court of Oyer and Terminer, jurisdiction over persons and estates of infants and lunatics, and ecclesiastical, testamentary and intestate, and admiralty jurisdictions were conferred upon the Supreme Court. Clause 32 conferred upon the Supreme Court the power to frame process and rules.

35. Clause 55 made the Court of Requests and the Court of Quarter Sessions established at Bombay subject to the Supreme Court of Judicature at Bombay, and was in the following terms:

55. Court of Request and Quarter Sessions, &c,, to be subject to this Court.

AND to the end that the Court of Requests and the Court of Quarter Sessions, erected and established at Bombay aforesaid, and the Justices and other Magistrates appointed for the Town and Island of Bombay, and the Factories subordinate thereto, may better the ends of their respective institutions, and act conformably to law and justice, it is our further will and pleasure, and We do hereby further grant, ordain, and establish, That all and every the said Courts and Magistrates shall be subject to the order and control of the said Supreme Court of Judicature at Bombay, in such sort, manner, and form, as the Inferior Courts and Magistrates of and in that part of Great Britain called England, are by law subject to the order and control of our Court of King''s Bench; to which end, the said Supreme Court of Judicature at Bombay is hereby empowered and authorised to award and issue a writ or writs of Mandamus, Certiorari, Procedendo, or Error, to be prepared in manner abovementioned, and directed to such Courts or Magistrates as the case may require, and to punish any contempt thereof, or wilful disobedience thereunto, by fine and imprisonment

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Clause 56 provided for an appeal to the Privy Council from any judgment or determination of the Supreme Court.

36. u/s 8 of the Indian High Courts Act, 1861, upon the establishment of the High Court for the Bombay Presidency the Supreme Court of Judicature at Bombay and the Court of Sudder Dewanny Adalat and Sudder Foujdarry Adalat in the Bombay Presidency were to stand abolished. Section 9 conferred various powers and jurisdictions upon the High Courts, u/s 10 the High Courts were to exercise all jurisdictions possessed by the Supreme Courts, and u/s 11 all existing provisions in law applicable to the Supreme Courts were to apply to High Courts. These three sections are material for our purpose and require to be reproduced in extenso. They are as follows:

9. Jurisdiction and Powers of High Courts.

Each of the High Courts to be established under this Act shall have and exercise 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 Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject, however, to such Directions and Limitations as to the Exercise of original Civil and Criminal Jurisdiction beyond the Limits of the Presidency Towns as may be prescribed thereby; and, save as by such Letters Patent may be other'' wise directed, and subject and without Prejudice to the Legislative Powers in relation to the Matters as aforesaid of the Governor General of India in Council, the High Court to be established in each Presidency shall have and exercise all Jurisdiction and every Power and Authority whatsoever in any Manner vested in any of the Courts in the same Presidency abolished under this Act at the Time of the Abolition of such last-mentioned Courts.

10. High Courts to exercise same jurisdiction as Supreme Courts.

Until the Crown shall otherwise provide under the Powers of this Act, all Jurisdiction now exercised by the Supreme Courts of Calcutta, Madras and Bombay respectively over Inhabitants of such Parts of India as may not be comprised within the local Limits of the Letters Patent to be issued under this Act establishing High Courts at Fort William, Madras and Bombay, shall be exercised by such High Courts respectively.

11. Existing Provisions applicable to Supreme Courts to apply to High Courts.

Upon the Establishment of the said High Courts in the said Presidencies respectively all Provisions then in force in India of Acts of Parliament, or of any Orders of her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the Time or respective Times of the Establishment of such High Courts are respectively applicable to the Supreme Courts at Port William in Bengal, Madras and Bombay respectively, or to the "Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof

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respectively, so far as may be consistent with the Provisions of this Act, and the Letters Patent to be issued in pursuance thereof, and subject to the Legislative Powers in relation to the Matters aforesaid of the Governor General of India in Council.

It is pertinent to note that Section 9 conferred the jurisdictions mentioned therein upon the High Courts "save as by such Letters Patent may be otherwise directed". Section 13 of the said Act conferred rule-making power upon the High Courts, and Section 14 conferred power upon the Chief Justice from time to time to determine what Judge in each case should sit alone and what Judges of the Court, whether with or without the Chief Justice, should constitute the several Division Courts. These two sections were in these terms:

13. Power to High Courts to provide for Exercise of Jurisdiction by single Judges or Division Courts.

Subject to any Laws or Regulations which may be made by the Governor General in Council the High Court established in any Presidency under this Act may by its own Rules provide for the Exercise, by One or more Judges, or by Division Courts constituted by two or more Judges, of the said High Court, of the original and appellate Jurisdiction vested in such Court, in such Manner as may appear to such Court to be convenient for the due Administration of Justice.

14. Chief Justice to determine what Judges shall sit alone or in the Division Courts.

The Chief Justice of each High Court shall from Time to Time determine what Judge in each Case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

Section 15 of the said Act conferred upon the High Court the power of superintendence over all Courts subject to its appellate jurisdiction. As this power of superintendence was very similar to like power conferred by Section 107 of the Government of India Act of 1915, it would not be out of place to reproduce this section. It is as follows:

15. High Court to superintend and to frame Rules of Practice for subordinate Courts.

Each of the High Courts established under this Act shall have Superintendence owner all Courts which may be subject to its appellate Jurisdiction, and shall have Power to call for Returns, and to direct the Transfer of any Suit or Appeal from any such Court to any other Court of equal or superior Jurisdiction and shall have Power to make and issue General Rules for regulating the Practice and Proceedings of such Courts, and also to prescribe Forms for every Proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all Books, Entries, and Accounts to be kept by the officers, and also to settle Tables of Fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from Time to Time to alter any such Rule or Form or

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Table; and the Rules so made, and the Forms so framed, and the Tables so settled shall be used and observed in the said Courts, provided that such General Rules and Forms and Tables be not inconsistent with the Provisions of any Law in force, and shall before they are issued have received the Sanction, in the Presidency of Fort William, of the Governor General in Council, and in Madras or Bombay of the Governor in Council of the respective Presidencies.

37. The original Letters Patent of 1862 by cl, 1 established the High Court for the Presidency of Bombay, to be called "the High Court of Judicature at Bombay" and expressly constituted the High Court to be "a Court of Record." Clauses 1.1 to 17 formed a group of clauses which bore the heading "Civil Jurisdiction of the High Court". Under Clause 11 the High Court was to have and exercise Ordinary Original Civil Jurisdiction within'' such local limits as may, from time to time, be declared and prescribed by any law or regulation made by the Governor in Council, and until such local limits were so declared and prescribed, within the limits of the then local jurisdiction of the Supreme Court of Judicature at Bombay, Cl, 12 prescribed when the ordinary original civil jurisdiction in suit became exercisable by the High Court. Clause 13 conferred upon the High Court the power to remove and try and determine as a Court of extraordinary original jurisdiction any suit in any Court subject to the superintendence of the High Court, whether such Court was within or without the Presidency of Bombay. Clause 14 and Clause 15 dealt with appeals; Clause 14 dealing with appeals from the Courts of original jurisdiction to the High Court in its appellate jurisdiction and Clause 15 dealing with appeals in the Courts of the Provinces. We will have occasion to refer to Clause 14 later.

38. Clause 16 of the 1862 Letters Patent conferred upon the High Court jurisdiction over infants and lunatics; and Clause 17 insolvency jurisdiction. Clauses 21 and 22 conferred upon the High Court ordinary original criminal jurisdiction, and Clause 23 conferred upon it "extraordinary original criminal jurisdiction" over all persons residing in places within the jurisdiction of any Court then subject to the superintendence of the Sudder Foujdarry Adalat, whether within or without the Presidency of Bombay. Clause 24 barred any appeal from any sentence or order passed in any criminal trial before the Courts of original criminal jurisdiction constituted by one or more Judges of the High Court. Clause 25, however, conferred a power of review upon the High Court in certain circumstances. Clause 26 ordained the High Court to be a Court of appeal from the criminal Courts of the Presidency of Bombay and from all other Courts which were subject to appeal to the Court of Sudder Foujdarry Adalat. Admiralty and vice-admiralty jurisdiction, both civil and criminal, was conferred by Clauses 31 and 32; testamentary and intestate jurisdiction by Clauses 33 and 34; and matrimonial jurisdiction by Clause 35. Clause 36 provided that any function which under the Letters Patent was to be performed by the High Court in the exercise of its original or appellate jurisdiction might be performed by any Judge or by any Division Court of the High Court appointed or constituted for such purpose by Section 13 of the Indian High Courts Act, 1861. Under Clause 44 of

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the said Letters Patent so much of the Letters Patent of the Supreme Court as were inconsistent "with the recited Act" (that is, the Indian High Courts Act, 1861) and with these Letters Patent were to "cease, determine, and be utterly void to all intents and purposes whatsoever."

39. u/s 17 of the Indian High Courts Act, 1861, the Crown could, if it so thought fit, at any time within three years after the establishment of any High Court under that Act, by Letters Patent, revoke all or such parts or provisions as the Crown thought fit of the Letters Patent by which such Court was established and could grant and make such other powers and provisions as the Crown thought fit, The said section also conferred power by similar Letters Patent to grant any additional or supplementary powers and provisions without revoking the earlier Letters Patent. In pursuance of the power conferred by the said Section 17, the Letters Patent of 1862 were revoked by Letters Patent dated December 28, 1865, which, with amendments, still continue to be Letters Patent of this High Court. These Letters Patent are hereinafter, for the sake of brevity, referred to as "the Letters Patent." Clause 2 of the Letters Patent provided that notwithstanding the revocation of the 1862 Letters Patent the High Court of Judicature at Bombay "shall be and continue as from the time of the original erection and establishment thereof, the High Court of Judicature at Bombay for the Presidency of Bombay" and that "the said Court shall be and continue a Court of Record". Clauses 11 to 18 of the Letters Patent are grouped under the heading "Civil Jurisdiction of the High Court". Under Clause 11 the High Court is to have and exercise ordinary original civil jurisdiction within such local limits as might, from time to time, be declared and prescribed by any law made by the Governor in Council, and until such local limits were so declared and prescribed, within the limits of the local jurisdiction of the High Court at the date of the publication of the Letters Patent. Clause 12 provides for the suits with respect to which the High Court is to exercise its ordinary original civil jurisdiction. Clause 13 confers upon the High Court the power to remove and to try and determine, as "a Court of extraordinary original jurisdiction", any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of Bombay, subject to the High Court''s superintendence, either when the High Court thinks proper to do so or on the agreement of the parties to that effect or for justice. Clause 15 deals with appeal to the High Court from the judgment of a single Judge, and Clause 16 makes the High Court a Court of Appeal from the Civil Courts of the Presidency of Bombay and from all other Courts subject to its superintendence. Clause 17 confers upon the High Court jurisdiction as to infants and lunatics, and Clause 18 confers upon it the jurisdiction] in insolvency. Criminal jurisdiction of the High Court is dealt with by Clauses 22 and 29, and admiralty and vice-admiralty jurisdiction, both civil and criminal, by Clauses 32 and 33. Clause 34 confers upon the High Court testamentary and intestate jurisdiction, and Clause 35 matrimonial jurisdiction. Clause 36 as amended by further Letters Patent dated March 11, 1919, and December 9, 1927, inter alia provides as follows:

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36. Single Judges and Division Courts.

And we do hereby declare that any function, which is hereby directed to be performed by the said High Court of Judicature at Bombay in the exercise of its original or appellate jurisdiction, may be performed by any Judge or any Division Court thereof, appointed or constituted for such purpose, in pursuance of section One hundred and eight of the Government of India Act, 1915.

The words "in pursuance of section One hundred and eight of the Government of India Act, 1915" were substituted for the words "under the provisions of the 13th section of the aforesaid Act of the Twenty-fourth and Twenty-fifth Years of Our reign" by the Letters Patent dated March 11, 1919. The said clause further goes on to state what is to happen if the Judges constitutiong a Division Court are divided in opinion. This part of the clause was amended by the Letters Patent dated December 9, 1927. Clause 37 confers upon the High Court the power to make rules and orders, from time to time, for the purpose of regulating all proceedings in civil cases: which may be brought before this High Court, including proceedings in its admiralty, vice-admiralty, intestate and matrimonial jurisdictions respectively, with this proviso that the High, Court is to be guided in making such rules and orders as far as may be possible by the provisions of the CPC (Act No. VIII of 1859) and the provisions of any law which was made amending or altering the same by competent legislative authority. Clause 41 deals with appeals in criminal cases. Clause 45 inter alia provides that

so much of the aforesaid Letters Patent granted by His Majesty King George the Fourth (that is, the Letters Patent of the Supreme Court) as was not revoked or determined by the said Letters Patent of the Twenty-sixth of June One Thousand Eight hundred and Sixty-two, and is inconsistent, with these Letters Patent, shall cease, determine, and be utterly void to all intents and purposes whatsoever.

40. We are not concerned with the Indian Councils Acts and the Government of India Acts which were passed between this date and 1915. We may, however, note that in 1876 Queen Victoria was proclaimed "Empress of India" and India which had become a Crown Colony in 1858 ceased to be so and became the British Empire.

41. The next Act with which we are concerned is the Government of India Act, 1915 (5 & 6 Geo. V c. 61). This Act was amended in 1916 by the Government of India (Amendment) Act, 1916 (6 & 7 Geo. V c. 37), and principally by the Government of India Act, 1919 (9 & 10 Geo. V c. 101). The Government of India Act, 1915, as so amended, is, u/s 135 of that Act, to be cited as "the Government of India Act". We will, however, for the sake of brevity, refer to this Act as "the 1915 Act". The 1915 Act introduced a scheme of ''dyarchy'' in the Provinces, but the constitutional set-up still remained unitary. The 1915 Act repealed several statutes including the Indian High Courts Act, 1861, as also the Indian High Courts Act, 1865. u/s 130, such repeal was inter alia not to affect "the validity of any law, charter, letters patent ... rule .., order ... under any

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enactment hereby repealed and in force at the commencement of" the 1915 Act.

The provisions of the 1915 Act with which we are really concerned are those contained in Part IX which consisted of, Sections 101 to 114 and was headed "THE INDIAN HIGH COURTS". Sections 101 to 105 bore the sub-heading ''Constitution'' (that is, the Constitution of the High, Courts). Sections 106 to 111 bore the sub-heading ''Jurisdiction'' (that is, the jurisdiction of the High Courts). We are not concerned with the other sections in this Part or the sub-headings under which they occur. Section 101(1) provided that

The high courts referred to in this Act are the high courts of judicature for the time being established in British India by letters patent.

The sections which are really important from our point of view are Sections 106 and 108, and they are as follows:

106. Jurisdiction of high courts.

(1) The several high courts are court? of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as art vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(1-A) The letters patent establishing or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. Powers of high courts with respect to subordinate courts.

Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-

(a) call for returns;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the

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officers of any such courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. Exercise of jurisdiction by single judges or division courts,

(1) Each high court may by its own rules provide as it thinks for the exercise, by one or more judges, or by division courts constituted by two or more judges of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

It may be mentioned that Section 113 of the 1915 Act conferred power upon the Crown, by Letters Patent, to establish additional High Courts, Under it the Crown could, by Letters Patent, establish a High Court of Judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another High Court, and could alter the limits of the local jurisdictions of existing High Courts.

43. The 1915 Act, except its preamble and Sub-section (1) of Section 47 which dealt with members of Governor''s Executive Council, was repealed by the Government of India Act, 1935 (26 Geo. V, and 1 Edw. 6 c. 2) (hereinafter referred to as "the 1935 Act"). The 1935 Act envisaged a federal constitution. It made a division of powers between the centre and the provinces, certain subjects being exclusively assigned to the central Legislature and others to the Provincial Legislature. In yet another field the two Legislatures had concurrent legislative powers. The 1935 Act came into force with regard to the Provinces in April 1937. The federal structure at the centre, however, never came into existence, and the Central Government continued to be carried on in accordance with the provisions of the 1915 Act except that its executive and legislative powers were restricted to the matters assigned to it by 1935 Act. Part IX of the 1935 Act is headed "THE JUDICATURE". Chapter I dealt with a new Court which was set up, namely, the Federal Court. Section 214 conferred upon the Federal Court, with the approval of the Governor-General in his discretion, the power to make rules for regulating generally the practice and procedure of that Court. Chapter II was headed "THE HIGH COURTS IN BRITISH INDIA". Section 219, without the proviso to Sub-section (1) thereof which is not material for our purpose, provided as follows:

219. Meaning of ''High Court''.

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(1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act,, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner''s Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under the chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act:

(2) The provisions of this chapter shall apply to every High Court in British India.

Section 220(1), as amended by the India and Burma (Miscellaneous Amendments) Act, 1940 (St. 3 & 4, Geo.VI, Ch. 5), provided as follows:

220. Constitution of High Courts.

(1) Every High Court shall be a cowl of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint.

There was a proviso to this sub-section with which we are not concerned. Sections 223 to 225 require to be reproduced in extenso. They are as follows:

228. Jurisdiction of existing High Courts.

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, 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 Part III of this Act.

224. Administrative functions of High Courts.

(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts;

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Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

225. Transfer of certain cases to High Court, for trial.

(1) If on an application made in accordance with the provision s of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made, except in relation to a Federal Act, by the Advocate-General, for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate for the Province.

Section 226 barred the High Court''s original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof unless otherwise provided by an Act of the appropriate Legislature.

44. The political events with which everyone is familiar led to the passing of the Indian Independence Act, 1947 (10 & 11, Geo. VI ch. 30). Under this Act as from August 15, 1947 (referred to in the said Act as "the appointed day"), two independent Dominions were set up in India, to be known respectively as, India and Pakistan. In each Dominion there was to be a Governor-General to be appointed by the King. Section 6 and the material provisions of Sections 7 and 8 were as follows:

6. Legislation for the new Dominiotis.

(1) The Legislature of each of the new Dominions shall have full power to make laws for that Dominion, including laws having extraterritorial operation.

(2) No law and no provision of any law made by the Legislature of either of the new Dominions shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Legislature of each Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the Dominion.

(3) The Governor-General of each of the new Dominions shall have full power to assent in His Majesty''s name to any law of the Legislature of that Dominion and so much of any Act as relates to the disallowance of laws by His Majesty or the reservation of laws for the signification of His Majesty''s pleasure thereon or the

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suspension of the operation of laws until the signification of His Majesty''s pleasure thereon shall not apply to laws of the Legislature of either of the new Dominions.

(4) No Act of Parliament of the United Kingdom passed on or after the appointed day shall em-tend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion unless it is extended thereto by a law of the Legislature of the Dominion.

(5) No Order in Council made on or after the appointed day under any Act passed before the appointed day, and no order, rule or other instrument made on or after the appointed day under any such Act by any United Kingdom Minister or other authority, shall extend, or be deemed to extend, to either of the new Dominions as part of the law of that Dominion.

(6) The power referred to in Sub-section (1) of this section extends to the making of Laws limiting for the future the powers of the Legislature of the Dominion.

7. Consequences of the setting up of the new Dominions.

(1) As from the appointed day-

(a) His Majesty''s Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India.

(b) The suzerainty of His Majesty aver the Indian States lapses,-,.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words ''India Imperator'' and the words ''Emperor of India'' and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

8. Temporary provision as to government, of each of the new Dominions.

(1) In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly.

(2) Except in so far as other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion under Sub-section (1) of this section, each of the new Dominions and all Provinces and other parts thereof shall be governed as nearly as may be in accordance with the Government of India Act, 1985; and the provision of that Act, and of the Orders in Council, rules and other instruments made thereunder, shall, so far as applicable, and subject to any express provisions of this Act, and with such omissions, additions, adaptations, and modifications as may be specified in orders of the Governor-

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General under the next succeeding section, have effect accordingly:

(3) Any provision of the Government of India Act, 1985, which, as applied to either of the new Dominions by Sub-section (2) of this section and the orders therein referred to, operates to limit the power of the legislature of that Dominion shall, unless and until other provision is made by or in accordance with a law made by the Constituent Assembly of the Dominion in accordance with the provisions of Sub-section (1) of this section, have the like effect as a law of the Legislature of the Dominion limiting for the future the powers of that Legislature.

Sub-section (3) of Section 19 defines the terra "Constituent Assembly". Clause (a) thereof defines it in relation to India and Clause (b) in relation to Pakistan. The said clause (a) was as follows:

19. Interpretation, etc.

...

(2) References in this Act to the Constituent Assembly of ft Dominion shall be construed as references-

(a) in relation to India, to the Constituent Assembly, the first sitting whereof was held on the ninth day of December, nineteen hundred and forty-six, modified-

(i) by the exclusion of the members representing Bengal, and Punjab, Sind and British Baluchistan; and

(ii) should it appear that the North-West Frontier Province will form part of Pakistan, by the exclusion of the members representing that Province; and

(iii) by the inclusion of members representing West Bengal and west Punjab; and

(iv) should it appear that on the appointed day, a part of the Province of Assam is to form part of the new Province of East Bengal, by the exclusion of the members theretofore representing the Province of Assam, and the inclusion of members chosen to represent the remainder of that Province;.

45. The Constituent Assembly so set up under the Indian Independence Act adopted and enacted in the name of the people of India the Constitution of India. Under act. 394 of the Constitution the said Article 394 and Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, and 393 came into force at once and the remaining provisions came into force on January 26, 1950. This date, namely, "the 26th day of January 1950" is referred to in the Constitution as the commencement of the Constitution. The Constitution repealed both the Government of India Act, 1935, and the Indian Independence Act, 1947.

46. Before referring to the provisions of the Constitution it will be convenient now to reproduce the most important clause of the Letters Patent with which we are concerned, namely, Clause 15, which provides for a right of appeal to the High Court from the judgment of a single Judge, which appeal the said Full Bench has referred to as "intra-court appeal", which nomenclature for the sake of

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convenience we will adopt. Before setting out this clause it would be relevant to set out the clause relating to intra-court appeals in the 1862 Letters Patent, namely, Clause 14. The said clause was as follows:

14. Appeal front the Courts of original jurisdiction to the High Court in its appellate jurisdiction,

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment, in all cases of original civil jurisdiction, of one or more Judges of the said High Court or of any Division Court, pursuant to Section 13 of the said recited Act: Provided always that no such appeal shall lie to the High Court as aforesaid from any such decision made by a majority of the full number of Judges of the said High Court, but that the right of appeal in such case shall be to Us, Our heirs or successors, in Our or their Privy Council in manner hereinafter provided.

Clause 15 of the Letters Patent in its original form was in the following terms;

15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction.

And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 18 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided.

47. By Letters Patent dated March 11, 1919 published in the Bombay Government Gazette dated June 19, 1919, Part I, at pp. 1446 and 1447, the words and brackets in Clause 15, namely, "(not being a sentence or order passed or made in any criminal trial)", were substituted by the words and brackets

(not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section one hundred and seven of the Government of India Act, 1915, or in the exercise of criminal jurisdiction).

The Letters Patent of Calcutta and Madras High Court were similarly amended. These amendments were made in consequence of a divergence of opinion between different High Courts; on the question whether an appeal lay under Clause 15 of the Letters Patent against the judgment of a single Judge exercising the power of revision. The Calcutta and Madras High Courts had taken the view that such an appeal lay, while the Bombay High Court had taken a contrary view

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(See Chairman, Budge Budge Municipality Vs. Mongru Mia and Others, ; Sukhendu Bikash Barua Vs. Hare Krishna De and Others, and Patel Kashiram Lavjibhai Vs. Narottamdas Bechardas and Others, By Letters Patent dated December 9, 1927 published in the Bombay Government Gazette dated February 2, 1928, Part I, at pp. 196 and. 197, Clause 15 was substituted. This substituted clause was amended by Letters Patent dated January 22, 1929 published in the Bombay Government Gazette dated January 24, 1929, Part I, at pp. 1.31 and 132. The substituted Clause 15 as amended in 1929 reads as follows:

15. Appeal to the High Court from Judges of the Court.

And We do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or successors in Our or Their Privy Council, as hereinafter provided.

In the originally substituted clause the words "on or after the first day of February, One thousand nine hundred and twenty-nine" did not find a place but were inserted by the said Letters Patent of 1929.

48. We will now turn to the relevant provisions, of the Constitution, quoting and supplying the emphasis where necessary. As we are concerned with the position as at the date of the commencement of the Constitution, what is material for our purpose for the present are these provisions as originally enacted. Part VI of the Constitution was originally headed "THE STATES IN PART A OF THE FIRST SCHEDULE". The words "IN PART A OF THE FIRST SCHEDULE" were omitted by the Constitution (Seventh Amendment) Act, 1956. Chapter I of that Part is general and defines the expression! ''State''. Chapter II deals with the executive; chapt. III with the State Legislature; and chap. IV with the legislative power of the Governor, while chap. V deals with the High Courts. Chapter V is headed "THE HIGH COURTS IN THE STATES". Article 214 as originally enacted provided

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as follows:

214. High Courts for State.

(1) There shall be a High Court for each State.

(2) for the purposes of this Constitution the High Court exercising jurisdiction in relation to any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.

Clauses (2) and (3) of this Article were omitted by the Constitution (Seventh Amendment) Act, 1956. Article 215 provides as follows:

215. High Courts to be courts of ''record.

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.

Under Article 216 every High Court is to consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Article 225 provides as follows:

225. Jurisdiction of existing High Courts.

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.

The proviso to Article 225 was omitted by the Constitution (Forty-second Amendment) Act, 1976, and inserted again by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 20, 1979. Article 226(1) as originally enacted provided as follows:

226. Power of High Courts to issue certain writs.

(1) Notwithstanding anything in article 82, every High Court shall have power, throughout, the territories in relation to which it exercises jurisdiction, to issue to

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any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

This Article was amended by the Constitution (Fifteenth Amendment) Act, 1963, by the insertion of a clause, which is the present Clause (2). This clause was substituted by the Constitution (Forty-second Amendment) Act, 1976. This Article was further amended by the Constitution (Forty-third Amendment) Act, 1977, and the Constitution (Forty-fourth Amendment) Act, 1978. One of the results of these amendments is that Clause (1) of Article 226 has now been restored to its original form. Article 227 as originally enacted provided as follows:

227. Power of superintendence over all courts by the High Court.

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Clause (1) of Article 227 was substituted by the Constitution (Forty-second Amendment) Act, 1976, to read, "Every High Court shall have superintendence over all courts subject to its appellate jurisdiction." The clause was further substituted, so as to restore it to its original form, by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 20, 1979. Under Article 228 the High Court has the .power where it is. satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the Constitution to withdraw that case, and either dispose of the

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case itself, or determine the said question of law and then return the case to the Court from which it was withdrawn to dispose it of in conformity with such judgment. Article 230 as originally enacted provided as follows:

230. Extension of or exclusion from the jurisdiction of High Courts.

Parliament may by law-

(a) extend the jurisdiction of a High Court to, or

(b) exclude the jurisdiction of a High Court 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.

This Article was substituted by the Constitution (Seventh Amendment) Act, 1956, when the distinction between Parts A, B and C of the Constitution was done away with from the Constitution, and the Article now confers power upon Parliament to extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory. Clause (14) of Article 366 defines the term "High Court" as follows:

366. Definitions.

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

...

(14) ''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.

Article 372(1) provides as follows:

372. Continuance in force of existing laws and their adaptation.

(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 or repealed or amended by a competent Legislature or other competent authority.

The expression "existing law" is defined by Clause (10) of Article 366 to mean

any law, Ordinance, order, bye-law, rule or regulation passed or made before the

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commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation.

49. Chapter IV of Part V consisting of Articles 124 to 147 provides for a Supreme Court of India. Part V is headed "THE UNION", and chap. IV thereof "THE UNION JUDICIARY." Article 124 provides for the establishment and constitution of the Supreme Court. Article 145 confers upon the Supreme Court the power, "subject to the provisions of any law made by Parliament", to make from time to time, with the approval of the President, rules for regulating generally the practice and procedure of the Court. This power includes under Sub-clause (c) of Article 145(1) the power to make "rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III" (that is, Fundamental Rights).

50. The only other provisions of the Constitution which now require to be looked at for our purpose are Article 367 and certain Entries in Schedule VII to the Constitution, which contains the Legislative Lists. Under Article 367(1) the General Clauses Act, 1897, subject to any adaptations and modifications that may be made therein, is to apply for the interpretation of the Constitution. Entries 77, 78, 79 and 95 in List I-the Union List-in sch, VII to the Constitution provides as follows:

77. Constitution, organisation, 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 organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before 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.

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

Entries 77 and 95 have remained unamended.. In Entry 78 the brackets and words "(including vacations)" were inserted with retrospective effect by the Constitution (Fifteenth Amendment) Act, 1963. When the distinction, between Parts A, B and C States were abolished to be replaced by States and Union territories the original Entry 79 was substituted by the above entry by the Constitution (Seventh Amendment) Act, 1956. The original Entry 67 was, as follows:

67. Extension of the jurisdiction of a High Court having its principal seat in any State to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.

Entry 3 in List II as originally enacted provided as follows:

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3. Administration of justice; constitution and organisation 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.

By the Constitution (Forty-second Amendment) Act, 1976, certain words in Entry 3 were omitted with effect from January 3, 1977. The Entry now reads as follows:

3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

Entry 65 in List II, which has not been amended, reads as follows:

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

By the Constitution (Forty-second Amendment) Act, 1976, Entry 11A was inserted in List III-''the Concurrent List-with effect from January 3, 1977. Entry 11A is as follows:

11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.

Entries 14 and 46 of List III provide as follows:

14. Contempt of court, but not including contempt of the Supreme Court.

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

51. The first point which falls for consideration is whether, as held by the said Full Bench, the Constitution of India "purports to lay down an original institutional matrix of its own" and that "it is not out of the historical ramparts that something is being put up, but a fundamental scheme". The determination of this question also involves a consideration of the conclusion reached by the said Full Bench that

in the matters of powers of the High Court, therefore, there is clear evidence that the Constitution posits a break from that past and has made absolutely a new original and vital beginning.

While considering this question! the said Full Bench has referred to earlier legislations as ".Imperial" legislations and the Letters Patent issued for the establishment of the three Chartered High Courts as. having been- issued by the then, "Imperial" Sovereign. At the outset we may point out that Queen Victoria was proclaimed Empress of India in 1876. To refer, therefore, to any statute of the British Parliament enacted prior to 1876 as "Imperial" legislation or to the Letters Patent issued in 1862 and 1865 as issued by the "Imperial" Sovereign would not be correct; for, at that time, the territories in India under the British rule were only a Crown colony;

52. All the evidence to be gathered from the historical narration above set out

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clearly shows that the Constitution of India did not make a break with the past, but is the result of a process of evolution, Politically, India achieved her own independence, but legally and constitutionally the independence of India was an act of the British Parliament (or the Imperial Legislature, if one prefers that nomenclature). Its legal and constitutional basis was the Indian Independence Act, 1947, and it was in the exercise of power conferred by that Act that the Constituent Assembly adopted and enacted the Constitution of India. The setting up of the Constituent Assembly was itself an act of the British Crown. In 1940 the Coalition Government in Great Britain recognised the principle that Indians should themselves frame a new Constitution for an autonomous India. Repeated efforts were made to bring about unanimity among different political parties on the basis for such a Constitution. Ultimately, elections for a Constituent Assembly were held, and the Constituent Assembly first sat on December 9, 1946. The Constituent Assembly was composed of representatives of the Provinces and of the Indian States, on the basis of one representative for million of the population. Representatives of the Provinces were elected by the members of the lower Chamber of the Provincial Legislatures where the Legislatures were bicameral and by the only Chamber of the Provincial Legislatures where the Legislatures consisted of only one Chamber. In the case of the Indian States, their representatives were elected by electoral colleges constituted by the Indian Rulers. The Bill to enact the Indian Independence Act, 1947, was introduced in the British Parliament on July 4, 1947, and was enacted with the Royal Assent on July 18, 1947, to take effect from August 15, 1947. The important provisions of the Indian Independence Act, 1947, were:

(1) Two independent Dominions in India, known respectively as India and Pakistan, were set up, each with a Governor-General who was to be appointed by the Crown.

(2) The Legislature of each of the two Dominions was to have full legislative sovereignty, and no Act of the British Parliament passed after August) 15, 1947 was to extend to either of the two Dominions as part of the law of that Dominion unless it was extended thereto by a law of the Legislature of that Dominion]. -

(3) After August 15, 1947 the Government of the United Kingdom was to have no responsibility respecting the government of India or Pakistan.

(4) The Paramountcy of the British Crown over the Indian States lapsed.

(5) The Constituent Assembly which had been elected and had its first sitting on December 9, 1946 was to be the Constituent Assembly of India, while Pakistan was to set up a fresh Constituent Assembly for herself.

(6) The Constituent Assembly was not to be subject to any limitation whatever in exercising its constituent powers.

(7) The powers of the Legislature of each of the Dominions, were exercisable by the Constituent Assembly of that Dominion.

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(8) Until a new Constitution was framed, the government of the two Dominions was to be carried on in accordance with the Government of India Act, 1935, with certain adaptations and modifications.

It should be remembered that the Constituent Assembly had been elected for undivided India by indirect election by the members of the Provincial Legislative Assembly and the electoral colleges constituted by the Indian rulers according to the scheme recommended by the Cabinet Delegation. This Constituent Assembly was not a sovereign body. Its authority was limited both in respect of the basic principles and procedure. It was the Indian Independence Act, 1947 which established the sovereign character of the Constituent Assembly and freed it from all limitations. This is the harsh reality of history which one cannot escape. On the midnight of August 14, 1947 the Constituent Assembly reassembled as the sovereign Constituent Assembly for the Dominion of India. As a result of the Partition, the representatives of Bengal, Punjab, Sand, Northwest Frontier Province, Baluchistan, and the Sylhet District of Assam (which District had joined the Dominion of Pakistan by a referendum) ceased to be the members of the Constituent Assembly of India, and there were fresh elections in the new Provinces of West Bengal and East Punjab. The result was that when the Constituent Assembly reassembled on October 31, 1947 its membership was 299 only, including 70 representatives of the Indian States. Of this total number of members of the Constituent Assembly, 284 were actually present on November 25, 1949 to append their signatures to the Constitution as finally passed (See Basu''s "Introduction to the Constitution of India", eighth edn., pp. 13 to 18; Basu''s "Commentary on the Constitution of India", fifth edn., vol. I, pp. 1 to 5; Sukla''s "Constitution of India", sixth edn., pp. LVI to LX.)

53. The above facts show that the Constitution of India was neither the product of any agreement between the component units nor the result of any revolution nor was it accepted or adopted by the people of India in a referendum.

54. The Constitution of India has the distinction! of being the lengthiest written Constitution in the world. As originally enacted, it had 395 Articles and 8 Schedules. Far from being something totally new and different it has drawn freely from the experience of the past and borrowed extensively from other Constitutions. As Dr. Ambedkar said in the course of the Constituent Assembly Debates ("Constituent Assembly Debates", vol. VII, pp. 35-38):

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled when the first written Constitution was drafted. It has then been followed by many other countries reducing their Constitutions to writing....Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country.

(The emphasis has been supplied by us)

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55. Some have described the opening words of the Constitution of India, namely, "WE, THE PEOPLE OF INDIA", as being revolutionary. These words follow a well-accepted pattern adopted by other Constitutions. They are taken from the Constitution of the United States of America which was adopted on September 17, 1787 and of the Constitution of Eire which became effective on December 29, 1937. The Constitution of Japan which was adopted on November 3, 1946 and became effective on May 3, 1947, also opens with the words "We, the Japanese People". The Preamble to our Constitution is also modelled upon the Preambles of other Constitutions. It will be sufficient to compare our Preamble with the Preamble to only two other Constitutions by quoting them, supplying the emphasise where necessary. The Preamble to our Constitution, as originally enacted, provided as follows:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens;

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 194.9, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The preamble to the Constitution of the United States of America reads as follows:

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United Slates of America.

56. The preamble to the Constitution of Eire is in the following terms:

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred.

We, the people of Eire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial,

Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our nation,

And seeking to promote the common good, with due observance of prudence, justice and charity, so that the dignity and freedom of the individual may be

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assured, true social order attained, the unity of our country restored, and concord established with other nations.

Do hereby adopt, enact, and give to ourselves this Constitution.

57. The concepts of Fundamental Rights and Directive Principles of State Policy are also not something new in the Constitution of India. The first ten Amendments to the Constitution of the United States of America, which reproduce in substance the American Bill of Rights, contained rights akin to the Fundamental Rights in the Constitution of India though not designated as such. The Constitution of Eire has a chapter headed ''"FUNDAMENTAL RIGHTS" and another chapter headed "DIRECTIVE PRINCIPLES OF SOCIAL POLICY". The Constitution of Japan contains a chapter, namely, chap. Ill, headed "Rights and Duties of the People". Almost three-fourth of the Constitution- of India is based upon the Government of India Act, 1935, subject to modifications which were made in the light of experience. The federal form contained in the Constitution of India is erected on the foundation of the Government of India Act, 1935, and shaped mostly in the light of the Constitution of the Dominion of Canada. The principle of responsible Government is taken from the British constitutional system. The provisions relating to emergency are also patterned on. the Government of India Act, 1935.

58. It is only in the sense that our Constitution has borrowed so freely from other Constitutions and the Government of India Act, 1935, that the phrase "the rising manhattan of the constitutional complex", used in para. 14 of the judgment of the said Full Bench, may be applied to our Constitution, for the word ''manhattan'', though, when spelt with a capital letter, is the name of a city in the State of Kansas in the United States .and in popular usage denotes Manhattan Island situate at the mouth of the Hudson River near New York City in New York Bay, when spelt ordinarily, as in the said judgment, means, as any dictionary would show, a "cocktail made of vermouth, whisky, etc.''".

59. It was unfortunate that the attention of the said Full Bench was not drawn to the case of State of Gujarat Vs. Vora Fiddali Badruddin Mithibarwala, . This was a decision of a Bench of seven Judges'' of the Supreme Court. Dealing with an argument that the sovereignty of the Dominion of India and of the Indian States was surrendered to the people of India, and in the exercise of their sovereign power the people gave themselves the new Constitution as from January 26, 1950, and some other arguments with which we are not concerned, Shah J., observed as follows (p. 1091(1)):

...These assumptions are not supported by history or by constitutional theory. There is no warrant for holding that at the stroke of midnight of the 23rd January, 1880, all our pre-existing political institutions cased to exist, and in the next moment arose a new set of institutions completely unrelated to the past. The Constituent Assembly which gave form to the Constitution functioned for several years under the old regime, and set up the Constitutional machinery on

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the foundations of the earlier political set up. It did not seek to destory the past institutions; it raised an edifice on what existed before. The Constituent Assembly moulded itself no new sovereignty: it merely gave shape to the aspirations of the people by destroying foreign control and evolving a completely democratic form of government as a republic. The process wan not one, of destruction, but of evolution.

(The emphasis has been supplied by us.)

Though some of the Judges in that case have differed on certain points, on this point none has expressed a dissent.

60. It will be clear from what is set out above that the Constitution did not set up a new "fundamental scheme" as held by the said Full Bench. It is also not correct that the Constitution "purports to lay down an original institutional matrix of its own". The Constitution, on the contrary, set up the constitutional machinery on the foundations of the past. It is equally not correct to describe the Constitution as a matrix, that is, a womb, giving birth to new institutions. Most institutions, including the High Courts, as also the laws in force, which were in existence at the commencement of the Constitution, were preserved and continued by the Constitution. What the Constitution did was to put its imprimatur on them and on their continuance.

61. It was, however, argued before us that there was a fundamental difference between an institution created by ordinary law such as, for example, the Government of India Act, 1935, and an institution created by a constituent or paramount law, namely, the Constitution of India, and that this distinction made all the difference. In support of this'' contention considerable emphasis was placed upon the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , and particularly upon the observations therein of Chandrachud J, (as he then was). In that case, popularly known as the Kesavananda Bharati Case, what fell for consideration was the correctness of the decision of the Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, which had held that Article 368 of the Constitution related only to the procedure for amending the Constitution but did not confer on Parliament any power to do so. The Constitution (Twenty-fourth, Amendment) Act, 1971, was passed to get over this decision and expressly empowered Parliament to amend any provisions of the Constitution, including those relating to fundamental rights, and further made Article 13 of the Constitution! inapplicable to an amendment of the Constitution under Article 368. Writ petitions were filed challenging the validity of the above Constitution Amendment Act as also the Constitution (Twenty-fifth, Twenty-sixth and Twenty-ninth Amendments) Acts which adversely affected the fundamental rights under Part HI of the Constitution. The Supreme Court by a majority overruled Golak Nath''s case and upheld the validity of the Constitution (Twenty-fourth Amendment) Act, 1971. While considering whether am Act passed to amend the Constitution was law as. envisaged by Clause (2) of Article 13 and by Article 245 which confers upon Parliament the power "to make laws",

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Chandrachud J., considered the difference between a constitutional law and an ordinary law and pointed out (p. 2037).

...There is high and consistent" ''authority for the view that Constitution is the fundamental or basic law, and that it is a law of superior obligation to which the ordinary law must con form,... (para. 2079)

The fundamental distinction between constitutional law and ordinary law lies in the criterion of validity. In the case of constitutional law, its validity is inherent whereas in the ease of an ordinary law its validity has to be decided on the touchstone of the constitution. (para. 2081)

62. According to Dicey constitutional law includes "all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state". (Dickey''s "An Introduction! to the Study of the Law of the Constitution", tenth edn,, p. 23). What the constitutional law usually embraces within its scope has been thus set out by Hood Phillips ("O. Hood Phillips'' Constitutional and Administrative Law", sixth edn., p. 11):

More specifically, constitutional law embraces that part of a country''s laws which relates to the following topics, among others: the method of choosing the Head of State, whether king or president; his powers and prerogatives; the constitution of the legislature; its powers and the privileges of its members; if there are two Chambers, the relations between them; the status of Ministers and the position of the civil servants who act under them; the armed forces and the power to control them; the relations between the central government and local authorities; treaty-making power; citizenship; the raising and spending of public money; the general system of courts, and the tenure and immunities of judges; civil liberties and their limitations; the parliamentary franchise and electoral boundaries; and the procedure (if any) for amending the constitution.

(The emphasis has been supplied by us.)

We may also usefully refer to the following observations of Patanjali Sastri J., who spoke for the Court, in Shankari Prasad v. Union of India AIR [1951] S.C. 458:

Although ''law'' must ordinarily include constitutional law, there is a clear demarcation between ordinary law, which is made in exercise of legislative power, and constitutional law, which is made in exercise of constituent power. Dicey defines constitutional lam as including ''all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the State.'' It is thus mainly concerned with the creation of the three great organs of the State, the executive, the legislature and the judiciary, the distribution of governmental power among them and the definition of their mutual relation.

(The emphasis has been supplied by us.)

63. No one before us disputes that a constitutional law is paramount and stands

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on a different footing from an ordinary law. The question before us is altogether different and is a twofold one:

(1) Whether the Government of India Acts were constitutional laws, and (2) whether the Constitution of India converted the High Courts into a new and separate constitutional entity making a complete break with the past?

64. In the sense defined above, the Government of India Acts were also constitutional laws, for they dealt with all the above matters, just as our Constitution does. It is true that the Government of India Acts were passed by the British Parliament. The British Parliament is a sovereign and supreme legislative authority and can make, and has made, laws "affecting "the three great organs, of the State, the executive, the legislature and the judiciary, the distribution of governmental power among them and the definition of their mutual relation." In De Llama''s celebrated words (quoted by Dicey in his "Introduction to the Study of the Law of the Constitution", tenth edn., p. 43) "Parliament can do everything but make a woman a man, and a man a woman." Instances of the type of legislation enacted by the British Parliament which partake of the nature of a constitutional law and may rightly be termed as constitutional law are the Act of Settlement, 1701, which varied and finally fixed the descent of the Crown; the Act of Union with Scotland, 1706; and the Act of Union with Ireland, 1800. The Government of India Acts and the Indian Independence Act, 1947, too were legislations of this kind.

65. Judicial decisions of the High Court, the legislative expression and the Constitution of India itself have treated the Government of India Acts, and in particular the Government of India Act, 1935, as Constitution Acts. In In re the Central Province and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (Central Provinces and Berar Act No. XVI of 1938) [1939] F.C.R. 18, Sir Maurice Gwyer C.J., referred to the Government of India Act, 1935, as the Constitution Act. Similarly, in In re the Hindu Women''s Rights to Property Act, 1937 and the Hindu Women''s Rights to Property (Amendment) Act, [1941] F.C.R. 12 , the Government of India Act, 1935, was referred to as the Constitution Act. In Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, , where the question was whether the word ''income'' in entry 54 of List I of the Seventh Schedule to the Government of India Act, 1935, included "capital gain" the Supreme Court said (p. 61(1)):

It should be remembered that the question before us relates to the correct interpretation of a word appearing in a Constitution Act which, as has been said, must not be construed in any narrow and pedantic sanse.

66. It may be mentioned that other Acts passed by the British Parliament for the government of various parts of the Crown''s territories have been considered and judicially recognised as Constitution Acts. Instances can be multiplied but two will suffice. The British North-West Act (30 & 31 Vict. c. 3) was passed in 1867 to provide for the establishment in Canada of one Dominion and for the legislative

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authority in the Dominion and to declare the nature of the executive government therein. In British Coal Corporation v. The King [1935] A.C. 500, in which case the interpretation, of this statute arose, Lord Sankey L.C., delivering the opinion of the Judicial Committee, said:

Indeed, in interpreting a constituent or organic statute such as the Act, that construction most beneficial to the widest possible amplitude of its powers must be adopted.

In Jamen v. Commonwealth of Australia [1936] A.C. 578, where a question arose as to the interpretation of the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12), the Privy Council again proceeded upon the basis, that that Act was a Constitution Act.

67. Order XXVIIA was inserted in the Code of Civil Procedure, 1908, by the CPC (Amendment) Act, 1942 (XXIII of 1942), for the purpose of giving notice to the Advocate-General of India or the Advocate-General of a Province, as the case may be, where in a suit a substantial question of law as to the interpretation of the Government of India Act, 1935, or any Order-in-Council made thereunder was involved, The Legislative Assembly Bill No. 32 of 1942, which when enacted became the CPC (Amendment) Act, 1942, in the Statement of Objects and Reasons thereto, refers to the Government of India Act, 1935, as the Constitution Act (Gazette of India, Part V, dated September 10, 1942, at p. 140). Thus the Indian Legislature also recognised the Government of India Act, 1935, as a Constitution Act.

68. The most important thing is that the Constitution of India itself treats the Government of India Act, 1935, and the Indian Independence Act, 1947, as constitutional laws. These two Acts were repealed by Article 395 of the Constitution. Article 132 provides for an appeal to the Supreme Court from any "judgment, decree or final order of a High Court on a certificate given'' by the High Court that the case involves a substantial question of law as to "the interpretation of the Constitution." Article 228 confers upon the High Court the power to transfer a case pending in a Court subordinate to it for disposal by itself if it involves a substantial question of law "as to the interpretation of this Constitution". Article 147 of the Constitution provides as follows:

147. Interpretation.

In this Chapter (that is, Chapter IV of Part V which deals with the Union judiciary) and in Chapter V of Part VI (that is, the Chapter which deals with the High Courts in the States), references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1985 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or the Indian Independence Act, 1947, or of any order made thereunder.

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(The emphasis has been supplied by us.)

69. For the above reasons, it would be incorrect to characterize the Government of India Acts as ordinary laws and not as constitution or constitutional laws. It is true that these Constitution Acts were given to a subject country by a foreign constituent and legislative body but we must not forget that it was this very foreign constituent and legislative body which brought into being the Constituent Assembly, freed it of all limitations and made it possible for it to give to'' India its Constitution.

70. We will now examine the position which was canvassed before us relying upon the judgment of the said Full Bench, namely, that in the matter of powers of the High Court the Constitution had made a break from the past and has made a new, original and vital beginning. That this is not the correct position is clearly evident on a comparison of the various Charters and Statutes above referred to with the Constitution of India. The said Full Bench appears to have been much impressed by the fact that under Article 215 every High Court is to be a Court of record and is to have -all the powers of such a Court, including the power to punish for contempt of itself. According to the said Full Bench, "This subserves the need to indicate that the High Court under the Constitution has an institutional permanence." With respect, we do not see any special significance in this particular provision. This is a provision to be found in respect of every superior Court. Under the Letters Patent dated September 24, 1726 (13 Geo. I), granted by George I the Mayor''s Courts which were established at Madras, Bombay and Calcutta were expressly made Courts of Record, and this position was reiterated when a fresh Charter (26 Geo. II) dated January 8, 1753 was granted to the East India Company by George II. Similarly, the Recorder''s Court, established by Charter dated February 20, 1798 (38 Geo. III) was made a Court of Record (See Naoroji Beramji v. Henry Rogers, at pp. 54, 61). Clause 1 of the Charter of the Supreme Court of Judicature at Bombay expressly made that Court a Court of Record. Clause 1 of the Letters Patent of 1862 constituted the High Court of Judicature at Bombay to be a Court of Record, and it was this High Court which by Clause 1 of the Letters Patent of 1865 was continued as a High Court of Judicature at Bombay for the Presidency of Bombay as a Court of Record, Section 160 of the Government of India Act, 1915, provided that the several High Courts would be Courts of record, and Section 220 of the Government of India Act, 1935, made identical provision. The scheme of chap. V of Part VI of the Constitution which relates to the High Courts in the States closely follows the scheme of Part IX of the Government of India Act, 1915 and chap. II of Part IX of the Government of India Act, 1935, both of which deal with High Courts, These Chapters provide for the constitution of the High Courts as Courts of Record, for the salaries and tenure of Judges of the High Courts, the power to make rules and regulate the sittings of the High Courts, and the continuance of the jurisdiction of the High Courts existing as at the date of each of the two Government of India Acts coming into force, just as chap. V of Part VI of the Constitution does. These two Acts also provide for continuance in force of

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laws in existence at the date when these Acts respectively came into force.

71. We will consider later certain specific powers conferred upon the High Courts by Articles 226, 227 and 228 of the Constitution, but before doing so it is necessary to deal with another argument advanced before us, based upon the conclusion reached by the said Full Bench (in para. 17 of the judgment), that unlike in the past, under the Constitution the existence of the High Courts is no more dependent upon the terms of any ordinary legislation. With respect, we again do not find this to be a correct position in law. It is true that under Article 214 of the Constitution there is to be a High Court for each State. Under Article 1(2) as originally enacted the territories which were to constitute the States at the commencement of the Constitution! were to be as set out in the First Schedule to the Constitution. A glance at the Schedule will show that the nine Provinces under the Government of India Act, 1935, with the territorial modifications resulting from the Partition, became the nine Part A States. Clause (2) of Article 215 of the Constitution, prior to its deletion by the Constitution (Seventh Amendment) Act, 1956, provided that for the purposes of the Constitution the High Court exercising jurisdiction in relation to any Province before the commencement of the Constitution shall be deemed to be the High Court for the corresponding State. Article 2 confers powers upon, Parliament by law to admit into the Union, or establish, new States. Article 3 conferred upon Parliament by law the power to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, as .also to increase or diminish the area of any State or alter the boundaries or name of any State. All the above things the Parliament can do by ordinary law. Once a new State is formed, Article 214 requires that it should have a High Court. Entry 78 in List I of the Seventh Schedule to the Constitution read with Article 246 confers power upon Parliament to make laws inter alia for the constitution and organisation of High Courts. Entry 11A in List II of the Seventh Schedule confers power both upon Parliament and State Legislatures to make laws inter alia for the constitution and organisation of all Courts except the Supreme Court and the High Courts. The said Entry 11A fell for interpretation before the Supreme Court in In re, Special Courts Bill, 1978 In Re: The Special Courts Bill, 1978, The Supreme Court held that the words of the said Entry were sufficiently wide in their amplitude to enable Parliament to set up Courts and to constitute and organise, that is to say, to create, new or Special Courts, subject to the limitation mentioned in the said Entry as regards the Supreme Court and the High Courts. The same phraseology as in the said Entry 11A occurs in Entry 78 in List I in the Seventh Schedule, and the same interpretation, therefore, must apply to it, and Parliament has, therefore, under the Constitution by ordinary law the power to constitute and organise, that is to say, to create, new High Courts. This, in fact, is what Parliament has done in a number of cases when the States were reorganised or a new State formed or admitted into the Union. This is in fact what Parliament did for the erstwhile State of Andhra by Section 28 of the Andhra State Act, 1953 (XXX of 1953),

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which Act formed a new Part A State to be known as the State of Andhra. Part V of the States Re-organisation Act, 1956 (XXXVII of 1956), did it for certain new and reorganised States and Part IV of the Bombay Reorganisation Act, 1960 (XI of 1960), constituted and established a new High Court for the State of Gujarat created by the said Act, All these three Acts were ordinary laws. Instances can be multiplied, but the above three instances will suffice.

72. We will now turn to Articles 226 227 and 228 of the Constitution and examine whether these Articles confer upon High Courts wholly new constitutional powers not possessed previously by existing High Courts or not reflected in any of the powers possessed by them at the commencement of the Constitution. Article 228 confers upon the High Court the power to transfer to itself a case pending in a Court subordinate to it if such case involves a substantial question of law as to the interpretation of the Constitution, and then either to dispose of the case itself or determine the said question and return the case to the Court from which it was so withdrawn. A similar provision was to be found in Section 225 of the Government of India Act, 1935, under which the High Court had the power to transfer to itself for trial a case involving or likely to involve the question of the validity of any Federal or Provincial Act. 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. It will be useful to compare these Articles with earlier provisions. Clause 55 of the Charter of the Supreme Court of Judicature at Bombay made the Court''. of Request and the Court of Quarter Sessions subject to the order and control of the said Supreme Court. Section 15 of the Indian High Courts Act, 1861, conferred upon each Chartered High Court the power of superintendence over all Courts subject to its appellate jurisdiction. A similar power of superintendence was conferred upon the High Courts by Section 107 of the Government of India Act, 1915, and a more limited power of superintendence so far as judicial superintendence was concerned was conferred by Section 224 of the Government of India Act, 1935. ,

73. It is true that there was no provision in terms analogous to Article 226 in any earlier Statute, What Article 226 does is to confer upon every High Court the power to issue directions, orders and writs, including writs in the nature of habeas corpus, mandamus prohibition, quo warrants and certiorari. or any of them, for the enforcement of any of the rights conferred by Part III of the Constitution, namely. Fundamental Rights, and "for any other purpose." The marginal note to that Article is "Power of High Courts to issue certain writs", but as Article 226 itself shows the power conferred by it is wider than the power to issue the specific writs mentioned in the Article, for under that Article, the power is to issue "directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari". Was the power to issue writs of this nature foreign to existing High Courts? The answer must be in the negative so far as the three Chartered High Courts are concerned. Each of the Chartered High Courts possessed the original civil jurisdiction. The power to

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issue these writs, which are known as prerogative writs, was and is possessed by the Court of King''s Bench in England. The Court or Chancery also originally possessed the power to issue prerogative writs. Thus, it possessed the power to issue a prerogative writ of No exit regna to restrain a subject from leaving the Kingdom.

74. It had also the power to issue a writ of error to an inferior Court, as for example, a Court of Quarter Sessions in criminal cases. The prerogative writ of error coram vebis was issued in the Queen''s Bench, and a prerogative writ of error coram vebis was issued in the Common Pleas. By the time of Charles II applications for habeas corpus, certiorari and prohibition were usually made in the Court of King''s Bench rather than to the Court of Chancery. Mandamus was, however, issued almost exclusively by the Court of King''s Bench. The origin and history of these different prerogative writs will be found in Appendix I to de Smith''s Judicial Review of Administrative Action, Fourth edn. and under appropriate headings in Jowitt''s Dictionary of English Law and other Law Dictionaries;. Several of the old writs have fallen into disuse. The ones now most made use of are the five writs mentioned in Article 226 of the Constitution. The Recorder''s Courts were conferred jurisdiction similar to the Court of King''s Bench in England (See Naoroji Beramji v. Henry Rogers at p. 60). Clause 55 of the Letters Patent of 1823 establishing the Supreme Court of Judicature at Bombay conferred upon that Court the power to issue a writ of mandamus, certiorari, procedendo or error to the Court of Requests (which was the ancestor of the Presidency Small Cause Court at Bombay) and the Court of Quarter Sessions. Procedendo was a high prerogative writ which issued out of the common law jurisdiction of the Court of Chancery when Judges of any subordinate Court delayed the parties by not giving judgment on the one side or the other. In such a case the writ was known as a writ of procedendo ad judicium. A writ de non procedendo rege in consult was issued at the intervention of the King to withdraw from the cognizance of the common law Courts proceedings in which he claimed to have interest.

75. More important than this power to issue certain writs to Courts of Requests and Quarter Sessions conferred upon the said Supreme Court by Clause 55 of this Charter was the conferment on the said Supreme Court by Clause 5 of the Charter of the jurisdiction which the Court of King''s Bench possessed. This jurisdiction included the power to issue high prerogative writs. u/s 9 of the Indian High Courts Act, 1861, the High Courts were to have and exercise all jurisdiction, and every power and authority vested in any of the Courts abolished by the said Act, which included the Supreme Court of Judicature at Bombay. u/s 10 all jurisdiction then exercised by the Supreme Courts of Calcutta, Madras and Bombay respectively was to be exercised by each of the three High Courts until the Crown should otherwise provide. By Clause 44 of the Letters Patent of 1862 so much of the Letters Patent of the said Supreme Court as were inconsistent with the 1862 Letters Patent stood revoked, and when the Letters Patent of 1862 were replaced by new Letters Patent in 1865, Clause 45 of the 1865 Letters

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Patent expressly provided that so much of the Letters Patent of the said Supreme Court as were not revoked by the earlier Letters Patent of 1862 and were inconsistent with the Letters Patent of 1865 should stand revoked. Neither the Letters Patent of 1862 nor the Letters Patent of 1865 contained any provision inconsistent with the High Courts possessing the jurisdiction of the Court of King''s Bench which had been, conferred upon the Supreme Court at Bombay by Clause 5 of its Letters Patent, and each of the three High Courts on ,its Original Side continued to possess the power inter alia to issue high prerogative writs. This position is well settled and consistently recognised by judicial decisions. So far as the Bombay High Court is concerned, the two leading cases are Raghunath Keshav v. Poona Municipality AIR [1945] Bom. 7 : 46 Bom. L.R. 675 and Dinbai Petit v. M.S. Noronha AIR (1946) Bom. 407. The Judicial Committee of the Privy Council in Annie Besant v. Advocate General AIR [1919] P.C. 31 AIR 1943 164 (Privy Council) and Hamid Hasan v. Banwarilal Roy AIR [1947]P.C. 90 , has recognized this power of the Chartered High Courts of issuing prerogative writs within the local limits of their original civil jurisdiction. In the case of Ryots of Garabandho v. Zamindar of Parlakimedi the Judicial Committee has traced in great detail the history and nature of the writ jurisdiction with respect to the Madras High Court. The High Courts in India other than Chartered High Courts did not possess any such power. The Supreme Court in Election Commission, India Vs. Saka Venkata Subba Rao and, has also held that the three Chartered High Courts possessed the power to issue prerogative writs within, the local limits of their original civil jurisdiction, while the other High Courts did not possess any such power. In the same case the Supreme Court has pointed out what happened to this power when the Constitution was enacted in the following words (p. 212):

Turning now to the question as to the powers of a High Court under Article 226, it will be noticed that Article 225 continues to the existing High Court is the same jurisdiction and powers as they possessed immediately before the commencement of the Constitution. Though there had been some conflict of judicial opinion on the point, it was authoritatively decided by the Privy Council in Ryots of Garabandho v. Zamindar of Parlakimedi that High Court, of, Madras-the High Courts of Bombay and Calcutta were in the same position-had no power to issue what were known as high prerogative writs beyond the local limits of its original civil jurisdiction, and the power to issue such writs within those limits was derived by the Court as successor of the Supreme Court which had been exercising jurisdiction over the Presidency Town of Madras and was replaced by the High Court established in pursuance of the Charter Act of 1861. The other High Courts in India had no power to issue such, writs at all.

In that situation, the makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a, quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the Courts in England had developed and used whenever

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urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States'' sphere, new and wide powers on the High, Courts of issuing directions, orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc, ''for any other purpose'' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King''s Bench in England.

(The emphasis has been supplied by us.)

76. For the purpose of determining the question whether an appeal would lie under Clause 15 of the Letters Patent from the judgment of a single Judge of the High Court in a proceeding under Article 226 or 227 of the Constitution it is necessary first to examine the said clause to determine its scope and ambit. There was no intra-Court appeal provided for in respect of any judgment of the Supreme Court of Judicature at Bombay. Under Clause 56 of the Letters Patent of that Court an appeal lay to the Privy Council against any judgment or determination of the said Supreme Court in any case whatsoever. Section 8 of the Indian High Courts Act, 1861, conferred upon the High Court to be established thereunder both original and appellate jurisdiction. An intra-Court appeal was thus for the first time provided by Clause 14 of the Letters Patent of 1862. Under it an intra-Court appeal lay from the judgment of one or more Judges of the said High Court or of any Division Court pursuant to Section 13 of the Indian High Courts Act, 1861. This section conferred upon the High Courts the power to provide for the exercise, by one or more Judges or by Division Courts constituted by two or more Judges, of the High Court, of the original and appellate jurisdiction vested in such Court, in such manner as may appear to such Court to be convenient for the due administration of justice. An appeal under the said Clause 14, however, lay only from a judgment "in all cases of original civil jurisdiction". The marginal note to the said clause was "Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction." A very important change took place with respect to intra-Court appeals when the Letters Patent of 1862 were replaced by the present Letters Patent. Clause 15 in its original form contained the same marginal note, but the qualification that the judgment should be in a case of original civil jurisdiction was done away with and what was provided was that it should be a judgment which was not a sentence or order passed or made in any criminal trial. This would show that an appeal would lie against each and every matter except a sentence or order passed or made in a criminal trial. When Clause 15 was substituted by the Letters Patent dated December 9, 1927, the marginal note changed to "Appeal to the High Court from Judges of the Court." This change brought the marginal note in conformity with what the clause provided. Under the original Clause 15 the judgment should have been a judgment "pursuant to Section, 13 of the said recited Act", the said recited Act being the Indian High Courts Act, 1861, for the very first paragraph of the preamble to the Letters Patent refers to and recites the said Act and the marginal note to the said paragraph is, "Recital of Act 24 & 25 vie., cap. 104",

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which is the said Indian High Courts Act. By the amending Letters Patent of 1927 this phrase was substituted by the phrase "Pursuant to Section 108 of the Government of India Act", that is, the Government of India Act, 1915.

77. We have been at pains to point out this difference between the old Clause 14 and the present Clause 15 because, while construing Clause 15, the said Full Bench has in para. 27 of the judgment referred to and relied upon the Despatch from the Secretary of State. We, however, find that what the said Full Bench has referred to is the Despatch dated May 14, 1862 from the Secretary of State forwarding the Letters Patent for the establishment of the High Court of Judicature at Fort William for the Presidency of Bengal. We presume that a similar Despatch accompanied the original Letters Patent dated June 26, 1862 for establishing the High Court of Bombay or, if not, in the Despatch, assuming there was any, a reference was made to the Despatch forwarding the Letters Patent of the Calcutta High Court or a copy thereof enclosed. No despatch appears to have accompanied the new Letters Patent of 1865. The attention of the said Full Bench does not, however, appear to have been drawn to this fact. Apart from this, a reference to the said Despatch does not appear to us to be relevant for the interpretation of Clause 15 of the Letters Patent. What is contained in the Despatch would really be in the nature of Explanatory Note. At the highest, we may equate the Despatch with a Statement of Objects and Reasons; but even if we equate it with a Statement of Objects and Reasons, as pointed out by the Supreme Court in The State of West Bengal Vs. Subodh Gopal Bose and Others, , a Statement of Objects and Reasons can be looked at for a very limited purpose only, namely, for ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce it and the extent and urgency of the evil which he sought to remedy. It, however, cannot afford aid to the interpretation of the enactment itself, for whether the intention of the Legislature in enacting a particular statute has been carried out or not should be gathered from the language of the statute itself.

78. We will now analyse Clause 15 of the Letters Patent in its finally amended form. Broken up into its component parts Clause 15 would read as follows:

An appeal shall lie to the said High Court of Judicature at Bombay-

(1) from a judgment,

(2) of one Judge of the High. Court or one Judge of any Division ''Court, (if) pursuant to Section 108 of the Government of India Act,

not being-

(a) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, unless it was a judgment given on or after February 1, 1929, and the Judge who passed the judgment declares that the case is a fit one for appeal;

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(b) an order made in the exercise of revisional jurisdiction;

(c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act;

(d) a sentence or order passed or made in the exercise of criminal jurisdiction.

79. Before considering each of these conditions which have been laid down for the appealability of a judgment under Clause 15 of the Letters Patent, we may point out that the first exception which provides for a Letters Patent appeal from a judgment in a second appeal decided by a Judge of this High Court if such Judge declares that the case is a fit one for appeal has now become redundant and inoperative in view of Section 100A of the Code of Civil Procedure, 1908, which was inserted in that Code by the CPC (Amendment) Act, 1976, under which no further appeal is to lie against the judgment of a single Judge of the High Court in a second appeal.

80. On reading the said Clause 15 as analysed above, before an intra-Court appeal can lie the first condition which must be satisfied is that what is sought to be appealed against is a judgment within the meaning of this clause. The exact meaning of the word ''judgment'' in Clause 15 of the Letters Patent of the three Chartered High Courts and in the corresponding clauses of the Letters Patent of the other High Courts has given rise to a conflict of opinion. We are, however, not concerned with this because there is no dispute that a judgment in a proceeding under Article 226 or 227 of the Constitution, if Clause 15 applies to the case, would be a ''judgment'' within the meaning of Clause 15, and there is equally no dispute that in such a case an interlocutory order appointing a receiver would also be a ''judgment,'' within the meaning of that clause.

81. The second condition is that it must be the judgment of a single Judge or of one Judge of a Division Court. Whether an appeal would lie from the judgment of one Judge of a Division Court would perhaps now be a matter of debate, because under Clause 36 of the Letters Patent as amended by the Letters Patent dated December 9, 1927 where a Division Bench is equally divided in opinion, it is to state the point upon which the Judges differ, and the case is then to be heard upon that point by one or more of the Judges other than those constitutiong the said Division Bench, and the point is to be decided according to the majority of the Judges who have heard the case, including those who first heard it. Prior to the amendment, in such a case the opinion of the senior Judge was to prevail. We are, however, not concerned with this question, because what we are concerned with is the right of appeal against the judgment of a single Judge.

82. The third condition is that it must be a judgment given pursuant to Section 108 of the Government of India Act, 1915. Section 108 was in very much the same terms as Section 13 of the Indian High Courts Act, 1861. Under the said Section 108 each High Court had the power by its rules to provide, as it thought fit, for the exercise, by one or more Judges, or by Division Courts constituted by

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two or more Judges, of the original and appellate jurisdiction vested in the High Court and the Chief Justice had the power to determine what Judge in each case should sit alone, and what Judges of the Court, whether with or without the Chief Justice, were to constitute the several division Courts. This phrase "pursuant to Section 108 of the Government of India Act" still remains in the Letters Patent. The question is, "Whether on the repeal of the Government of India Act, 1915, by the Government of India Act, 1935, this provision in Clause 15 of the Letters Patent has become redundant and inoperative?" The answer is clearly in the negative and is to be found in Section 38(1) of the Interpretation Act, 1889 (52 & 53 vict. c.63) of England, and Section 8 of the General Clauses Act, 1897. Section 38(1) of the Interpretation Act provides as follows:

38. Effect of repeal in future ,Acts,

(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

83. Section 8 of the General Clauses Act provides as follows:

8. Construction of references to repealed enactments,

(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and reanacted, with or without modification, any provision of a former enactment, then references in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

It will be noticed that Section 8 of the General Clauses Act is wider in its term than Section 38(1) of the Interpretation Act, for, while Section 38(1) speaks of "references in any other Act" only, Section 8(1) of the General Clauses Act speaks of "references in any other enactment or in any instrument". Section 8 provides not only for a case where the repeal is by a Central Act or Regulation but also where the repeal is by any Act of Parliament before August 15, 1947. Thus, by virtue of the combined operation of these statutory provisions, when the Government of India Act stood repealed, the reference to Section 108 of that Act in Clause 15 of the Letters Patent was to be read as a reference to Section 223 of the Government of India Act, 1935, which inter alia provided that the power of the existing High Courts to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division Courts

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should be the same as immediately before the commencement of Part III of the 1935 Act which dealt with the Governor''s Provinces. When the Constitution of India came into force, Article 225 made provisions identical with Section 223 of the Government of India Act, 1935, and, therefore, the reference to Section 108 of the Government of India Act, which was to be read as a reference to Section 223 of the Government of India Act, 1935, is now to be read as reference to Article 225 of the Constitution.

84. It was, however, submitted by Miss Jaising that it was not possible to read for the phrase "pursuant to Section 108 of the Government of India Act" either the phrase "pursuant to Section 223 of the Government of India Act, 1935" or the phrase "pursuant to Article 225 of the Constitution of India", because neither Section 223 nor Article 225 re-enacted the provisions of Section 108. She submitted that what Section 223 did was to re-enact the provisions of Section 106(1) of the Government of India Act, 1915, which continued the existing jurisdiction of the High Courts and the power to make rules so also Section 108 of the 1915 Act, and, therefore, it was not a re-enactment of the same provisions, and that what Article 225 re-enacted were the provisions of Section 223 of the 1935 Act and not the provisions of Section 108 of the 1915 Act. On the basis of this argument Miss Jaising submitted that Clause 15 had become inoperative because there could be no judgment pursuant to Section 108 of the 1915 Act after the repeal of that Act. This argument overlooks the fact that both u/s 38(1) of the Interpretation Act and Section 8 of the General Clauses Act the re-enactment can be with or without modification. Modification implies an alteration, and a modification would, therefore, either narrow or enlarge the provisions of the former Act (See In re Article 143, Constitution of India, Etc. AIR [1951] S.C. 332 . Apart from this, such an argument is not open before this Court in view of the express pronouncement on this point by the Supreme Court in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), . in which, while discussing the rule-making powers of this very High Court, the Supreme Court held as follows (p. 360(2)).

. .As a matter of history the power was not conferred for the first time by Section 108, Government of India Act, 1915. It had already been conferred by Section 13, Indian High Courts Act of 1861. We are further of the opinion that the High Court was right in the view that reference in Clause 15 to Section 108 should be read as a reference to the corresponding provisions of the 1935 Act and the Constitution. The canon of construction of statutes enunciated in Section 38, Interpretation Act and reiterated with some modifications in Section 8, General Clauses Act is one of general application where statutes or Acts have to be construed and there is no reasonable ground for holding that that rule of construction should not be applied in construing the charters of the different High Courts. These charters were granted under statutory powers and are subject to the legislative power of the Indian Legislature. Assuming however but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for

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holding that the principles of construction enunciated in those provisions have no application for construing these charters.

85. It may be mentioned that, according to Miss Jaising, the effect of her above argument would be that there would be no appeal against the judgment in a proceeding either under Article 226 or 227 though an appeal would lie against a judgment in a civil suit. We are unable to understand why this should be so if Miss Jaising''s argument were correct, and Miss Jaising was equally unable to explain this paradox to us. We may also point out that the Letters Patent would be "existing law" within the meaning of Clause (10) of Article 366, and under Article 372 the Letters Patent would continue in force unless altered repealed or amended by a competent Legislature or other competent authority. An argument that Clause 15 of the Letters Patent stood abrogated on the coming into force of the Constitution of India was advanced before a Division Bench of the Calcutta High Court and rejected by it in The Commercial Tax Officer, Central Section, West Bengal v. B. C. Nawn and Bros. Pvt. Ltd. [1973] Tax. L. R. 2191.

86. The phrase "pursuant to Section 108 of the Government of India Act" which, as mentioned above, is now to be read as "pursuant to Article 225 of the Constitution" shows that the right of appeal under Clause 15 of the Letters Patent is made dependent upon the Rules of the High Court. Unless the Rules provide for a matter or a class of matters to be heard by a Judge sitting singly, the question of a right of appeal from a single Judge''s judgment would not arise. Thus the rules of the High Court are the foundation upon which the right of appeal under Clause 15 of the Letters Patent is erected, so far as the Original Side of this High Court is concerned. Prior to the coming into force of the Constitution, R. 605 of the Rules and Forms of the High Court of Judicature at Bombay on the Original Side in Its Several Jurisdictions, 1950, which came into force on December 16, 1949, provided that every application for the issue of a writ of certiorari or prohibition was to be made before one of the Judges on the Original Side of the Court or any specially constituted Bench as the Chief Justice may appoint. These applications were to be made on the Original Side because the writ jurisdiction inherited by the High Court from the Supreme Court did not extend beyond the limits of the original civil jurisdiction of the High Court. After the Constitution came into force, R. 605 was substituted on July 16, 1953, and every application for the issue of a writ under Article 226 of the Constitution (other than a habeas corpus) within the local limits of the ordinary original civil jurisdiction of the Court was to be made on the Original Side. This rule was again substituted on August 3, 1953 and under it every application for the issue of a direction, order or writ under Article 226, other than an application for a writ of habeas corpus, if the matter in dispute was or had arisen substantially within Greater Bombay, was to be heard and disposed of by such one of the Judges sitting on the Original Side or by any specially constituted Bench as the Chief Justice might appoint. This rule was again substituted thereafter, the changes made referring to the contents of the application for such a direction, order or writ and do not concern us. When the 1950 Rules came to be substituted in 1957

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by the Rules and Forms of the Bombay High Court on the Original Side in Its Several Jurisdictions, 1957, the position under the relevant rule of the 1957 Rules, namely, R. 623, remained the same. The 1957 Rules were substituted in 1980 by the Rules and Forms of the High Court of Judicature at Bombay on the Original Side, 1980, which came into force on May 1, 1980. Rule 636 of the 1980 Rules is,, so far as, concerns our present purpose, in identical terms as the earlier R. 623. So far as the Appellate Side of this High Court is concerned, until July 1, 1964 the position was that all applications under Article 226 if the matter in dispute was or had arisen outside Greater Bombay and all applications under Articles 227 and 228 were, under chap. XVII of the Bombay High Court Appellate Side Rules, 1960, to be heard and disposed of by a Division Bench and not by a single Judge. Rule 15A was inserted in the said Chapter with effect from July 1, 1964 providing for applications under Article 226 or 227 of the Constitution or under Article 227 read with Article 226 of the Constitution arising out of the orders passed by the Maharashtra Revenue Tribunal to be heard and finally disposed of by a single Judge to be appointed in this behalf by the Chief Justice (Maharashtra Government Gazette, Part IV C, dated July 2, 1964, p. 891). Rule 15A was substituted with effect from July 15, 1964 to embrace within its scope not only orders passed by the Maharashtra Revenue Tribunal under any enactment but also orders passed by any other authority or tribunal under the Bombay Tenancy and Agricultural Lands Act, 1948, or the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Cutch Area) Act, 1958, or the Hyderabad Tenancy and Agricultural Lands Act, 1950. (Maharashtra Government Gazette, Part IV C, dated July 16, 1964 pp. 914-915). It is because applications under Article 226 and Article 227 are to be heard and disposed of as mentioned above by a single Judge sitting singly on the Original Side or the Appellate Side, as the case may be, that the question of an intra-Court appeal from a judgment in these proceedings arises. In Salubai Ramchandra v. Chandu (1964) 67 Bom. L.R. 69 : [1965] M. L.J. 203 a Division Bench of this High Court upheld the validity and constitutionality of R. 15A of the Bombay High Court Appellate Side Rules, 1960. The Court held that the High Court has unrestricted and unfettered power to make its own rules for the exercise of its various jurisdictions, the only limitation being that the rule would be subject to the provisions of the Constitution and to any law made by the State Legislature, The Division Bench further held that the rules made under the powers possessed by the High Court were rules of internal management within the High Court, and rules of procedure relating to the disposal of the matters which reach the High Court under its several jurisdictions, and that these rules have not the effect of creating any vested rights in the litigant when they direct that certain matters should be decided by a Division Bench or a single Judge and the litigant is not entitled to complain that the rules once made should not be changed. According to the Division Bench, the source of the power of the High Court to make rules is the provisions of Section 13 of the Indian High Courts Act, 1861, Clauses 36 and 37 of the Letters Patent, Section 108 of the Government of India Act, 1915, Section 223 of the Government of India Act, 1935 and Article 225 of the Constitution of

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India. In this context we may usefully quote the following passage from the judgment of the Supreme Court in Ittavira Mathal v. Varkey Varkey [1961] 1 S.C. R. 495:

. .There is yet: another reason why the argument of the learned Counsel cannot be accepted. That reason is that an appeal lay to a High Court and whether it is to be heard by one, two or a larger number of judges is merely a matter of procedure. No party has a vested right to have his appeal heard by a specified number of judges. An appeal lay to the High Court and the appeal in question was In fact heard and disposed by the High Court and, therefore, no right of the party has been infringed merely because it was heard by two judges and not by three judges. No doubt in certain classes of cases, as for instance, cases which involve an interpretation as to any provision of the Constitution, the Constitution provides that the Bench of the Supreme Court hearing the matter must be composed of judges who will not be less than five in number. But it does not follow from this that the legal requirements in this regard cannot be altered by a competent body. We therefore overrule the contention of the learned Counsel and hold that the appeal was rightly heard and decided by a Bench of two judges.

In a later case, P. Mohammed Meera Lebbai Vs. Thirumalaya Gounder Ramaswamy Gounder and Others, , the Supreme Court quoted the above passage from its earlier judgment with approval and reaffirmed the principle laid down therein.

87. In N.S. Thread Co. v. Jantes Chadwick d; Bros, already referred to earlier, the Supreme Court held that the power of the High Court to frame rules for the sittings of the Court and to regulate in what manner and by what Judges any matter or matters should be heard has been kept alive by Article 225 of the Constitution, an that this power had been reaffirmed with greater vigour by Section 108 of the Government of India Act, 1915, Section 223 of the Government of India Act, 1935. and by Article 225 of the Constitution. It said (p. 360) :

. .The High Courts still enjoy the same unfettered power us they enjoyed u/s 108 of the. Government of India Act, 1!)15 of making rules and providing whether an appeal has to lie heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court.

It is immaterial by what label or nomenclature that power is described in the different statutes or in Hie Letters Patent The'' power is there and continues to be there and can be exercised in the same manner as it could be exercised when it was originally conferred.

In South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, the Supreme Court, after referring with approval to its earlier decision in the N.S. Thread Co. v. James Chadwick & Bros., said as follows (p. 1446, paras. 9 and 10):

The relevant rule applicable to the present case- has been slated by this Court in

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the aforesaid decision thus :

Obviously after the appeal had reached the High Court it has to be determined according to Hie rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then the appeal must be regulated by the practice and procedure of that court.

This principle was laid down by the Judicial Committee in a number of decisions : see National Telephone Co., Ltd. v. Postmaster General [1913] A.C. 546 , AIR 1948 12 (Privy Council) Secretary of State for India v. Chellikani Rama Rao ILR (1916) Mad. 617 AIR [1916] P.C. 21 , AIR 1934 93 (Privy Council) and AIR 1936 93 (Privy Council)

88. It is pertinent to note that the High Court''s power to regulate the sittings of the Court and of members thereof sitting alone or in Division Court was: considered sufficiently important by the makers of the Constitution to incorporate it in the Constitution itself, namely, in Article 225, just as the British Parliament thought it important enough to include it in Section 108 of the Government of India Act, 1915, and Section 223 of the Government of India Act, 1935. As mentioned in Section 13 of the Indian High Courts Act, 1861, this is a power to be exercised "in such manner as may appear to such Court to be convenient for the due administration of Justice".

89. It is, therefore clear that a right of appeal under Clause 15 arises only when the precondition provided by the Rules of the High Court that a particular class of matters should be heard by a single Judge is fulfilled. The questions that would thereafter arise would be whether a judgment given by a single Judge is a judgment within the meaning of Clause 15 of the Letters Patent and even if it is, whether it falls tinder the categories of judgments and orders from which an appeal is expressly barred by Clause 15 of the Letters Patent. While considering the above point it is necessary to bear in mind that the word ''judgment'' in Clause 15 of the Letters, Patent is used without any qualification whatever in contrast to Clause 14 of the earlier Letters Patent of 1862 which restricted an appealable judgment to a judgment in all cases of original civil jurisdiction. Thus, except in respect of those particular judgments from which an appeal has been expressly barred by Clause 15, on a plain reading of that clause the judgment of a single Judge in any matter would be subject to an intra-Court appeal.

90. The arguments were, however, advanced in support of the contention that the word ''judgment'' would not include a judgment given by a single Judge in a proceeding under Article 226 or 227 of the Constitution, The first was that the Letters Patent deal only with the specific jurisdictions mentioned therein and, therefore, an intra-Court appeal could only lie from a judgment given in the exercise of such jurisdiction. The second was that even if Clause 15 extended to

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matters heard under jurisdictions conferred by law other than the Letters Patent, it would not extend to proceedings under Article 226 or 227 because the power under these two Articles is conferred by a constitutional law, namely, the Constitution itself, and, therefore, to make it subject to an intra-Court appeal and to rules framed by the High Court under Article 225 of the Constitution would be to make the Constitution subject to ordinary law.

91. As far back as 1867 in Ranee Shurno Moyee v. Lachmeeput Doogur (1867) 7 SWR 52, a Full Bench of seven Judges of the Calcutta High Court, after pointing out the difference in the language used in Clause 14 of the 1862 Letters Patent and that used in Clause 15 of the 1865 Letters Patent, which difference they called "a very remarkable alteration", held that the words in Clause 15, namely, "the judgment (not being a sentence or order passed or made in a criminal trial) of one Judge", were sufficiently comprehensive to include judgments passed in the exercise of every jurisdiction vested in the Court except the criminal jurisdiction. They further held that were the words of Clause 15 ambiguous they ought to receive a liberal construction, so as, if possible, to give a right of appeal; but, far from being ambiguous, the words of Clause 15 were clear. They also held that the right of appeal given by the words of Clause 15, if read in their ordinary and natural sense, should not and could not be taken away by giving them a narrow and restrictive construction. After referring with approval to this case the Gujarat High Court in Chhotalal Jivabhai v. Vadilal Mehta (1967) 12 Guj. L.R. 850, rejected the argument that Clause 15 contemplated only judgment given in the exercise of such jurisdictions as were expressly mentioned in the Letters Patent. Speaking for the Court, Bhagwati C.J. (as he then was), said (pp. 860-61):

..The words of Clause 15 do not contain any limitation as to the nature or quality of the jurisdiction which must be exercised by a single Judge of the High Court before an order made by him can be regarded as a judgment and there is neither principle nor authority which justifies the introduction of any such limitation... The only limitation which is to be found in the words of Clause 15 is that which is inherent in the word ''judgment'' and there is no reason why beyond that, any further limitation of the nature suggested on behalf of the first respondent should be allowed to curtail the scope and ambit of Clause 15. There is also inherent evidence in Clause 15 to show that it is not limited to judgments given in exercise of the jurisdictions expressly mentioned in the Letters Patent. The Letters Patent make no mention of revisional jurisdiction and yet the parenthetical portion in Clause 15 excludes an order made by single Judge in exercise of provisional jurisdiction on the footing that but for the exclusion, such an order would be within the ambit of Clause 16. There are also decided cases where appeals against judgments given in exercise of jurisdiction not specifically mentioned in the Letters Patent have been held admissible under Clause 15. The jurisdiction to commit for contempt is not expressly mentioned in the Letters Patent and yet it had been held by the Calcutta High Court in Mohendra Lall Milter v. Anundo Coomar Mitter ILR (1897) Cal. 236 , and by the Bombay High

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Court in The Collector of Bombay Vs. Issac Penhas, , that an order made by a single Judge committing a continuer for contempt is appealable under Clause 15. We find that this view which we are taking has also" commended itself to a Special Bench of the Calcutta High Court in Budge Budge Municipality v. Mongru Mia, para. 12 at p. 486.

(The emphasis has been supplied by us.)

To the instances given by the Gujarat High Court we may add the instance of the jurisdiction to issue high prerogative writs which the Chartered High Courts had inherited from the earlier Supreme Courts and which is not expressly mentioned in the Letters Patent. In Mahomedalli Allabux Vs. Ismailji Abdulali, , this High Court held that an appeal lay from an order passed by a single Judge directing a writ of habeas corpus to issue. Similarly, it was held in Raghunath Keshav v. Poona Municipality, that an appeal lay under Clause 15 of the Letters Patent against the issue of a writ of certiorari by a single Judge of the High Court. In 5. A. Industries (P) v. Sarup Singh, the Supreme Court, while dealing with Clause 10 of the Letters Patent of the Punjab High Court, which is in part materia with our cl, 15, observed as follows (p. 1445):

. . A plain reading of the said clause indicates that except in the 3 cases excluded an appeal lay against the judgment of a single Judge of the High Court to the High Court in exercise of any other jurisdiction... Looking at the first part of the amended clause excluding the exceptions, it is obvious that its wording is general... It is not permissible, by construction, to restrict the scope of the generality of the provisions of Clause 10 of the Latters Patent.

The case of National Sewing Thread Co. Ltd., Chidambaram v. James Chadwick and Bros. Ltd., already referred to earlier, dealt directly with Clause 15 of the Letters Patent of this High Court. The facts which gave rise to that appeal were that Section 76 of the Trade Marks Act, 1940, gave a right of appeal to the High Court against the order of the Registrar of Trade Marks rejecting an application for registering a trade mark. In India Electric Works Ltd. Vs. Registrar of Trade Marks, a Division Bench of the Calcutta High Court had held that the Trade Marks Act having been passed in 1940, after the coming into force of the Government of India Act, 1935, which repealed the Government of India Act, 1915, a judgment given in an appeal under the said Section 76 was not a judgment in such an appeal pursuant to Section 108 of the Government of India Act and, therefore, no appeal under Clause 15 of the Letters Patent lay against it. Dissenting from the Calcutta view, the Bombay High Court in James Chadwick and Bros. Ltd. Vs. The National Sewing Thread Co. Ltd., had held that an appeal lay. In an appeal from the Bombay decision the Supreme Court in N.S. Thread Co. v. James Chadwick & Bros., upheld the Bombay view. Overruling the decision of the Calcutta High Court, the Supreme Court said (p. 361):

Both the learned Judges there took the view that the authority given by Section 108(1) of the 1915 Statute, to make rules for the exercise by one or more

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Judges of the Court''s appellate jurisdiction was limited to the jurisdiction then vested in the Court, by Section 100(1) of the Act and by Cl, 16 of the Letters Patent. It was held that such rules thus could not relate to jurisdiction conferred by an Act passed after the commencement of the 1915 Statute nor to an appeal heard by the Court pursuant to such an Act, since the jurisdiction to hear such appeal having been conferred by the particular Act could not be said to have been conferred upon, or vested in the Court by Section 106(1) and by Clause 16 of the Letters Patent. This argument suffers from a two-fold defect. In the first place it does not take into consideration the other provisions of the Government of India Act 1915. Particularly the provision contained in Ss. 65 and 72. By Section 65(1), Government of India Act 1915 the Governor-General in Legislative Council was given power to make laws for all persons, for all courts, and for all places and things, within British India. By Section 72 he was also given power for promulgating ordinances in eases of emergency. By the Charter Act of 1915 therefore the High Court possessed all the jurisdiction that it had at the commencement of the Act and could also exercise all such jurisdiction that would be conferred upon it from time to time by the Legislative power conferred by that Act.

Reference to the provisions of Section 9, Indian High Courts Act of 1861 which Section 106(1), Government of India Act 1915 replaced makes this proposition quite clear. In express terms Section 9 made the jurisdiction of the High Courts subject to the legislative powers of the Governor-General in Legislative Council. Section 106 only conferred on the High Court Jurisdiction and power to make rules for regulating the practice of the Court, as were vested in them by Letters Patent, and subject to the provisions of any such Letters Patent, all such jurisdiction, powers and authority as were vested in those Courts at the commencement of the Act''.

The words ''subject to the legislative powers of the Governor-General'' used in Section 9, Charter Act of 1861 were omitted from the section, because of the wide power conferred on the Governor-General by Section 65, Government of India Act 1015. The jurisdiction conferred on the High Courts from the very inception was all the time liable to and subject to alteration by appropriate legislation. It is therefore not right to say that Section 108(1), Government of India Act 1915 empowered the. High Courts to make rules only concerning the jurisdiction that those Courts exercised when that Act was passed, on the other hand power was also conferred on them to make rules in respect of all jurisdiction then enjoyed or with which they may be vested hereafter...

We are further of the opinion that the Calcutta decision is also erroneous when it expresses the view that the range and ambit of the power conferred on the High Court by Section 108, Government of India Act of 1915 was limited by the provision of Section 106(1) of the Act or by the provisions of Clause 16 of the Letters Patent. There is no justification for placing such a construction on the plain and unambiguous words of that section. Section 108 is an enactment by

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itself and is unrestricted in its scope, and covers a much wider field than is covered by Section 106, Government of India Act. The only association it has with Section 106 is that in sequence it follows that section. It confers a power on the High Court to make rules in respect not only of the jurisdiction I fiat it enjoyed in 1915 but it also conferred power on it to make rules in respect of jurisdiction winch may hereafter be conferred on it by the enactments enacted by the Governor-General in Legislative Council.

(The emphasis has been supplied by us.)

92. The case of N.S. Thread Co. v. James Chudwick & Bros., has been distinguished by the said Full Bench on the ground that the jurisdiction which the single Judge of the High Court was exercising in that case was the jurisdiction under ordinary law and not under a constitutional law, namely, the Constitution of India. The argument was that if the powers of the High, Court under Articles 226 and 227 of the Constitution were also to be made subject to the rules of the High Court and the Letters Patent, these powers could be altered or affected by ordinary legislation. It was on this ground that the said Full Bench held that Articles 226 and 227 of the Constitution contained an inbuilt power to frame rules for the purposes of these two Articles. With respect, we are unable to accept this line of reasoning.

93. We have already reproduced earlier Article 225 of the Constitution. That article is subject to two conditions. Under it the jurisdiction of existing High Courts and the law administered by them and the power of the High Courts to make rules and regulations has been preserved and continued "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". These two conditions have been described by the said Full Bench in para. 20 of the judgment as ''limitations''. With respect, this is not a correct interpretation to place upon these opening words of Article 225. "Subject to the provisions of this Constitution" means "Subject to what is provided in this Constitution" which would include what is provided in Articles 226 and 227. The words "Subject to;" cannot be construed as referring only to a provision limiting or restricting the jurisdiction of the High Courts but would also include a provision which would enlarge the jurisdiction and powers of the High Courts. Thus, Article 225 comprehends within it not only the jurisdiction which the existing High Courts possessed at the commencement of the Constitution but also the jurisdiction! which the other Articles of the Constitution, such as Articles 226, 227 and 228, conferred upon the High Courts. The argument that the second condition in Article 225 which makes the jurisdiction of the High Courts subject to a law of the appropriate Legislature, and, therefore, the jurisdiction under Article 226 or 227 cannot be comprehended within it is, in our opinion, equally untenable. Undoubtedly, no law of any Legislature can limit, abridge or take away the powers conferred by Articles 226, 227 and 228. A provision for a right of appeal is not a provision which in any manner limits, abridges, takes

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away or adversely affects the powers of the High Courts under Article 226 or 227. It merely regulates the exercise of these powers. What has been overlooked is that an appeal is a continuance of the original proceeding and not a separate proceeding. In Garikapatti Veeraya Vs. N. Subbiah Choudhury, the Supreme Court held that:

.. The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(The emphasis has been supplied by us.)

In Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, , the Supreme Court said (p. 1603, para. 12):

An appeal or a revision on the other hand is generally considered to be a continuation of the original suit or proceeding and in a case, where the High Court deals with an appeal or a revision, finality for the purpose of Article 133 must attach to the whole of the matter so that after the decision of the High Court the matter is not a live one.

(The emphasis has been supplied by us.)

The conclusion reached by the said Full Bench in para. 61 of its judgment that an appeal in a proceeding under Article 226 or 227 would amount to- a second application for the same purpose is thus contrary to what has been laid down by the Supreme Court. It was unfortunate that these decisions of the Supreme Court were not brought to the notice of the said Full Bench.

94. Since Article 225 of the Constitution preserves the power of the High Court to make rules and to regulate the sittings of the Court not only in respect of the existing jurisdictions but also in respect of other jurisdictions and powers which the Constitution has conferred upon it, there can be no scope for reading by implication into Article 226 or 227 any rule-making power. Such an interpretation would be contrary to the well-established principle of interpretaition, namely, expressio unius est exclusio alterius, (the express mention of one person or thing is the exclusion of another). When the power to make rules is expressly conferred by Article 225 of the Constitution, no necessity whatever arises to seek for any implied power in that behalf in Article 226 or 227.

95. A similar question with which we are dealing arose: before; a Special Bench of five Judges of the Calcutta High Court in Budge Budge Municipality v. Mongru Mia. In that case the Special Bench (Das Gupta J., dissenting) held that in the absence of any special direction in the Constitution as to how the power under Article 226 is to be exercised, it must be exercised by each High Court according to its own rules and the provisions of the Letters Patent like any other power given to the High Court in general terms. The Special Bench further pointed out that when an appeal was entertained the High Court in hearing it was only completing the exercise of the power and not exercising it a second time. The

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Special Bench also rejected the argument that the jurisdiction of the High Court to frame rules was only with respect to such, jurisdiction as existed at the date of the Government of India Act, 1915. The Special Bench further held that the words "Subject to" in the opening part of Article 225 also covered enlargement of jurisdiction by laws and that the same words could not bear a different meaning with regard to the words "Subject to provisions, of the Constitution" and they must, therefore, have the effect of importing into Article 225 the enlargement of jurisdiction made by the Constitution itself. The Special Bench finally held that the jurisdiction conferred by Article 226 was also a jurisdiction under Article 225 and therefore the judgment given in the exercise of that jurisdiction was a judgment pursuant to Article 225. Das Gupta J., however, in his dissenting judgment followed the line of reasoning adopted in India Electric Works v. Registrar of Trade Marks. Subsequent to the giving of this judgment, as we have seen earlier, India Electric Works'' case was expressly overruled by the Supreme Court in N.S. Thread Co. v. James Chadwick & Bros.

96. The same view as that of the Calcutta High Court was taken by the Allahabad High Court in Sheo Prasad Vs. The State of Uttar Pradesh and Others, The relevant paragraphs in that judgment require to be reproduced in extenso. They are as follows (paras. 41 to 44, pp. 115-116):

It was then argued that the proceedings under Article 226 are not civil or criminal but constitutional, because the power to issue writs and orders is conferred by the Constitution. We cannot agree. The conferment of an additional power on existing Courts or even the creation of a new Court by the Constitution does not of itself create a new jurisdiction to be called constitutional jurisdiction. The Court of Queen''s Bench originated from the prerogative of the Crown under the unwritten British Constitution, but its jurisdiction is criminal and civil. The U.S. Supreme Court was created by Article of the American Constitution but its jurisdiction is criminal and civil. Our Supreme Court was created by Article 124 of the Constitution and its appellate powers were conferred by Articles 132 to 186. But it cannot be argued that, when the Supreme Court hears an appeal from a decree of a High Court in a civil suit, the proceedings lire converted into constitutional proceedings. If new Courts are created or additional powers are conferred on the existing Courts by the Constitution it does not mean that a new kind of jurisdiction is created but merely that the Courts cannot lie abolished nor the power restricted without amending the Constitution.

Article 226 provides that the High Court shall have the power to issue directors, orders, or writs, But it is silent about the manner of exercise of this power. It is elementary that a Court can make rules governing the exercise of its power and such rules have been framed by every High Court. Under the existing rules of this Court the power is exercised in summary proceedings on a petition by an aggrieved person. But there is nothing in Article 226 to prevent a High Court to frame new rules providing that the power of issuing orders, directions and writs shall also be exercised in all proceedings before the High Court. It is unlikely that

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any High Court will amend the existing procedure which provides a remedy which is convenient and expeditious. But the point to note is that the Court has absolute discretion to prescribe the manner of the exercise of the power under Article 226 and the Constitution does not prevent it from assuming this power in ordinary cases.

Again, Clause (8) of Article 32 provides that Parliament may be law empower any other Court to exercise all or any of the powers conferred on the Supreme Court under that article. If Parliament does pass a law enabling the ordinary courts to issue all the directions or orders or writs enumerated in Article 82, the additional power will not convert the proceedings before these Courts into constitutional proceedings.

It was then argued that the proceedings under Article 226 and Article 82 must be regarded as neither civil nor criminal but extraordinary because their purpose is the enforcement of fundamental rights conferred for the first time under the Constitution. The flaw in this argument is that the rights conferred under Part III of the Constitution are ordinary civil rights which were enjoyed by the citizens before 1950. The Constitution merely raised them to the status of fundamental rights-which means that the State cannot infringe them. In England the proceedings for the enforcement of these rights are civil in nature, and the position in India is not different.

(The emphasis has been supplied by us.)

97. There is a fundamental difference between the nature and character of a power and the exercise of that power. The power to issue writs, orders and directions is conferred upon the High Court by Article 226 of the Constitution. This Article does not provide how that power is to be exercised but, by the express terms of Article 225, leaves it to the High Court to make rules in that behalf. Once a party enters the High Court to invoke the power under Article 226, the conduct and character of the proceeding therein must necessarily be governed by the rules and procedure of the High Court, and if according to, such rules and the law governing them an appeal would lie from the decision of a single Judge, the right of appeal would be available.

98. In Indo-Mercantile Bank Ltd. Vs. Commissioner, Quilon Municipality, a Full Bench of the Kerala High Court held that the exercise of power and jurisdiction of the High Court, including the power and jurisdiction under Article 226, is part of the administration of justice by the High Court and that the manner in which the High Court is to exercise its power and jurisdiction has to be regulated by the rules to be passed for that purpose. In Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, Chandrachud J. (as he then was), said (p. 1346, para. 484):

The writ jurisdiction of the High Court under that Article (that is, Article 226) has to be exercised consistently with the laws made by competent legislatures within the area of their legislative power... The principles of res judicata and estoppel, the conclusive presumptions of law and various provisions of substantive law

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deny a free play to courts in the exercise of their jurisdiction. These are not for that reason unconstitutional qua the High Court''s jurisdiction under Article 226.

Undoubtedly, neither the rules nor any law made by a competent Legislature would be valid if contrary to or inconsistent with a provision of the Constitution. In this context it is pertinent to bear in mind that Article 32 of this Constitution also confers upon the Supreme Court a similar power of issuing directions, orders and writs for the enforcement of fundamental rights. Articles 145(1) confers upon the Supreme Court the power to make rules including rules as to the proceedings:'' in the Court for the enforcement of any of the rights conferred by Part III. This power is by the opening clause of Article 145(1) made "Subject to the provisions of any law made by Parliament". Therefore, the practice and procedure in respect of petitions under Article 32 for the enforcement of fundamental rights are to be regulated by the rules framed by the Supreme Court and by any law which may be made by Parliament in that behalf. By a majority the Supreme Court held in Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad, that Rule 12 of Order 35 of the Supreme Court Rules, 1950, which related to the giving of security for costs in a petition under Article 32 of the Constitution, was invalid and could not be sustained. According to the Supreme Court, such a rule would in some cases effectively bar and in all cases would amount to a hindrance in the further progress of the petition and its effect was not to aid the petition but to retard it to some extent. It can hardly be said of a right of appeal that it does not aid the petition or that it retards it or that it amounts to a hindrance in the further progress of the petition.

99. The said Full Bench has sought to distinguish the Supreme Court case in N.S. Thread Co. v. James Chadwick & Bros., by relying upon a decision of the Assam High Court in Radha Mohan v. Upendra Patowary AIR [1962] gau 71. With respect, we are unable to see any relevance in that case. That was a case which turned upon its own special facts. After the Assam High Court was constituted on April 5, 1948, by Section 3 of the Assam Revenue Tribunal (Transfer of Powers) Act, 1948, the Assam High Court was empowered to exercise such jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the State Government immediately before April 1, 1937 under any law for the time being in force. Section 5 of that Act provided that no appeal or revision should lie against any order passed by the Assam High Court in the exercise of its powers in appeal or revision under the said Act. In spite of the provisions of the said Section 5, a Letters Patent appeal was sought to be filed against the decision of a single Judge of the said High Court given u/s 3 of the said Act. The Assam High Court held that such an appeal was not competent. Section 5 of the said Act itself showed that no further appeal lay against decision of the High Court in an appeal u/s 3 of the said Act even though given by a Single Judge. The Assam High Court pointed out that the power exercised by the High Court under the said Act was a special jurisdiction and was an exercise by the High Court of powers possessed by the Provincial Government or the Tribunal created by it, which were transferred to the High Court and not the exercise by it of its powers

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as a High Court established under the Act by which the High Court was established. Thus, according to the'' Assam High Court, what the High Court was doing in deciding an appeal u/s 3 of the Act was to exercise as a transferee the powers of the Provincial Government and the Revenue Tribunal in revenue cases. To compare the jurisdiction of such, a special nature in which the High Court was substituted for a Provincial Government and the Revenue Tribunal with the exercise by the High Court of its power under Article 226 or 227 is, with respect, not correct. Under the Constitution the High Court is not created a special tribunal for the purpose of issuing directions, orders and writs. The power under Article 226 as also the power under Article 227 are conferred on the High Court as, High Court. These are powers which under Article 226 are "to extend throughout the territories in relation to which it exercises jurisdiction". The power of the High Court under Article 227 also extends "over all courts and tribunals, throughout the territories in relation to which it exercises jurisdiction". Clause (2) of Article 214 (now deleted by the Constitution (Seventh Amendment Act, 1956) constituted the High Court exercising jurisdiction in relation to any Province immediately before the commencement of the Constitution to be the High Court for the corresponding State and by the opening words of the said Clause (2), this was "for the purposes of this Constitution", that is, for the purposes of exercising all the functions, powers and jurisdictions of the High Court either conferred or continued by the Constitution. Articles 226 and 227 as also all the other Articles relating to the High Court including Articles 214 and 225 to 228 occur in chap. V of Part VI of the Constitution, which; Chapter is headed "The High Courts in the States". The opening part of Clause (14) of Article 366 defines a High Court as meaning "any Court which is deemed for the purposes of this Constitution to be a High Court for any State". The words "for the purposes of this Constitution" are of the widest amplitude and cover all jurisdictions and powers of the High Court, whether they are conferred upon it by the Constitution itself such as by Article 226 or 227 or 228 or those already possessed by it and received the sanction and imprimatur of the Constitution for their preservation and continuance. Unless, therefore, the judgment of a single Judge in a proceeding under Article 226 or Article 227 falls under one of the categories of judgments from which an appeal is expressly barred by Clause 15 of the Letters Patent an appeal under that clause would lie against that judgment.

100. We will first consider the case of Article 227. All High Courts, are unanimous in their opinion that no appeal lies from a judgment of a single Judge in a proceeding under Article 227. The reason given is that by the same process of interpretation which has resulted in reading the words "pursuant to Article 225 of the Constitution" for the words "pursuant to Section 108 of the Government India Act" in Clause 15 of the Letters Patent, the words "the provisions of Section 107 of the Government of India Act" should now be read as "the provisions of Article 227 of the Constitution". Under Clause 15 of the Letters Patent an appeal against the judgment of a single Judge is barred inter alia in two cases:;

(1) an order made in the exercise of revisional jurisdiction, and

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(2) a sentence or order passed in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, 1915.

It is pertinent to note that the words "provisional jurisdiction" are not qualified by the words "under Section 115 of the Code of Civil Procedure, 1908". The reason is that it is not only under the CPC that the High Court exercises provisional jurisdiction. It exercises provisional jurisdiction under various other enactments also, for example, u/s 25 of the Provincial Small Cause Courts Act, 1887. The words "power of superintendence" in Clause 15 of the Letters Patent are, however, expressly qualified by the words "under the provisions of Section 107 of the Government of India Act". The power of superintendence conferred upon High Courts by Section 107 of the Government of India Act, 1915, was replaced by Section 224 of the Government of India Act, 1935. The exact extent of the power of superintendence of the High Courts u/s 224 will be considered by us later. Assuming for a moment that this power of superintendence u/s 107 was repealed and re-enacted with modifications by Section 224 of the Government of India Act, 1935, then by reason of the combined operation of Section 38(1) of the Interpretation Act, 1889, and Section 8 of the General Clauses Act, 1897, the words "the power of superintendence under the provisions of Section 224 of the Government of India Act, 1935", were to be read into Clause 1.5 for the words "the power of superintendence under the provisions of Section 107 of the Government of India Act", By the same process of interpretation or on the principles of interpretation underlying these two sections, the words "the power of superintendence under the provisions of Article 227 of the Constitution" are to be read into Clause 15 of the Letters Patent for the words "the power of superintendence under the provisions of Section 224 of the Government of India Act, 1935" when the Constitution came into force and repealed the 1935 Act. The result is that just as an appeal under Clause 15 against the judgment of a single Judge in a proceeding u/s 107 of the Government of India Act, 1915, was barred, an appeal against the judgment of a single Judge in a proceeding under Article 227 of the Constitution is now equally barred by reason of it being a judgment falling under one of the categories against which appeals are expressly barred by that clause. On the above line of reasoning, a Division Bench of this High Court in Jagannath Ganbaji v. Gulabrao, held that no appeal under Clause 15 of the Letters Patent lay against the judgment of a single Judge in a proceeding under Article 227 of the Constitution. Other High Courts have taken the same view, for instance, the Calcutta High Court in Sukhendu v. Hare Krishna, and the Madras High Court in Srinivasa Reddiar and Others Vs. P. Krishnaswami Reddiar and Others, and in In Re: V. Tirupuliswamy Naidu, though in the last mentioned case, namely, In re V. Tirupuliswamy Naidu, the distinction between provisionalprovisional jurisdiction and power of superintendence was not made by the Madras High Court. The Jammu and Kashmir High Court in J. & K. Co-op. Bank v. Shamsuddin Bacha AIR [1970] J. & K. 190, has also held that an intra-Court appeal does not lie under Clause 12 of the Letters Patent of the Jammu and Kashmir High Court against the judgment of a single Judge in the exercise of

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the High Court''s power of superintendence u/s 104 of the Constitution of Jammu and Kashmir which corresponds to Article 227 of our Constitution.

101. Mr. A. H. Desai and Mr. B. A. Desai, however, argued that it is not correct that the provisions of Section 107 of the Government of India Act, 1915, were re-enacted with modification in Section 224 of the Government of India Act, 1935. In their submission, according to the preponderance of judicial opinion, Section 107 conferred upon the High Courts a power of judicial superintendence, while Section 224 conferred upon the High Courts only a power of administrative superintendence. According to them, Clause 15 deals with judgments, that is, orders and decrees made in judicial proceedings and no judicial order could be made in an administrative proceeding, and, therefore, on the repeal of the 1915 Act by the 1935 Act, the exception in Clause 15 with respect to a sentence or order passed or made in exercise of the power of superintendence under the provisions of Section 107 of the 1915 Act became redundant and inoperative. It was argued that though Section 38(1) of the Interpretation Act and Section 8 of the General Clauses Act speak of a repeal and re-enactment with or without modification, modification cannot amount to extinction and what Section 224 did was to destroy or extinguish completely the power of judicial superintendence which the High Courts possessed u/s 107. It was submitted that since this power of judicial superintendence became extinct on April 1, 1937 when the 1935 Act came into force with regard to the Provinces, on the repeal of the 1935 Act by the Constitution, there was nothing for Article 227 to repeal and re-enact with respect to the power of judicial superintendence u/s 107, because what did not exist could not be repealed and re-enacted. In support of this submission that modification could not amount to extinction Mr. A.H. Desai relied on the observations of Lord Justice Lindley in Mercantile Investment and General Trust Company v. International Company of Mexico (1893) 7 T.L.R. 616, in which while considering the powers of a majority of the shareholders of company to bind the minority, Lindley L. J., observed:

...the power to modify the rights of the debenture-holders against the company does not include a power to extinguish all their rights :...

The above observations were quoted with approval by Stirling J., in Follit v. Eddystone Granite Quarries (1892) L.R. 3 Ch. D. 75 . In order to substantiate his further submission that there was no power of judicial superintendence left in the High Courts u/s 224 of the 1935 Act, Mr. A. H. Desai strongly relied upon the following passage from the judgment of the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another, (p. 217, para. 13):

The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 except that the partner of superintendence has been extended by the Article also to Tribunals... The only question raised is as to the nature of the power of superintendence conferred by the Article. Reference is made to Clause (2) of the Article in support of the contention that this Article only confers on the High Court administrative

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superintendence over the Subordinate Courts and Tribunals. We are unable to accept this contention because Clause (2) is expressed to be without prejudice to the generality of the provisions in Clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1801, gave a power of judicial superintendence to the, High Court apart from and independently of the provisions of other laws conferring provisional jurisdiction on the High Court,

In this connection it has to be remembered that Section 107 of the Government of India Act, 1915 was reproduced in the Government of India Act, 1985 as Section 224. Section 234 of the 1935 Act, however, introduced nub-section (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior Court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the divisions of the different High Courts referred to above. Section 224 of the 1985 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that Sub-section (2) to Section 224 of the, 1935 Act has been omitted from Article 227.

This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the potter of judicial superintendence it had u/s 15 of the High Courts Act, 1861 and Section 107 of the Government of India Act, 1915. See the cases referred to in-'' Motilal Vs. State, Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.

(The emphasis has been supplied by us.)

Placing strong reliance upon the words emphasized in the above passage, it was argued that the Supreme Court had lard down that what Article 227 of the Constitution did was to restore to the High Courts the power of judicial superintendence which they had originally possessed u/s 107 of 1915 Act but had lost u/s 224 of the 1935 Act and that the word ''restored'' showed that this power of judicial superintendence did not exist in Section 224 of the 1935 Act.

103. The question as to the scope of the power of superintendence u/s 224 of the Government of India Act, 1935, fell to be considered by a Division Bench of this High Court in Kavasji Pestonji v. Rustomji Sorabji AIR [1949] Bom. 42. In that case the Division Bench held, after considering the case-law on the subject, that a power of judicial superintendence did exist in the High Courts u/s 224 and that if a judgment of an inferior Court was subject to appeal or revision, the High Court would still have the power to interfere judicially apart from merely dealing with that judgment in appeal or revision. It further held that the marginal note to Section 224, namely, "Administrative functions of High Courts", did not control the section and that by reason of Sub-section (2) of Section 224 the power of judicial superintendence was taken away only with regard to judgments which

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were not subject to appeal or revision. Speaking for the Court, Chagla C.J., said (p. 46, para. 10):

...The prohibition under Sub-section (2) only refers to those judgments of an inferior Court which are not otherwise subject to appeal or revision to the High Court. But the prohibition cannot and does not apply to judgments which are subject to appeal or revision. If Section 224(1) gave the High Court the power of judicial interference, that power obviously has not been wholly taken away, but it has been taken away to the extent of these judgments which are not subject to appeal or revision. In other words, if a judgment is subject to appeal or revision, it seems that the High Court would still have the power to interfere judicially apart from and over and above merely dealing with those judgments in appeal or revision. But for such a power the High Court could not have interfered in the case to which I have just referred, Emperor v. Jamnadas Natltji (1936) 39 Bom. L.R. 82, AIR [1937] Bom. 153.

Later in the judgment Chagla C.J., further observed (p. 52, para. 28):

...Sub-section (1) is identical in terms with Section 107, Government of India Act, 1915, except of course with regard to the deletion of Clause (b) of Section 107, and in my opinion Sub-section (1) includes the power which existed u/s 107, Government of India Act, 1915, of judicial superintendence and correction. By reason of Sub-section (2) that power is taken away only with regard to judgments which are not subject to appeal or revision.

The above observations of the Supreme Court in Waryam Singh''s case as also the decision of the Division Bench in Kavasji Pestonji Dalai v. Rustomp Sorabji Jamadar came up for consideration before a Full Bench of this High Court in Shripatrao Dajisaheb Ghatge and Another Vs. The State of Maharashtra and Another, Referring to the observations reproduced above in Waryam Singh''s case, the Full Bench said (p. 391):

It must be pointed out that the Court''s decision that judicial superintendence was" vested in the High Court under the original Article ''227 actually rested on two grounds: (a) on construction the Court held that Sub-Article (2) did not affect the generality of the provision contained in Sub-Article (1) which included judicial superintendence and (b) the preponderance of judicial opinion in India was that Section 107 of the Government of India Act, 1015 gave the power of judicial superintendence to High Court. Therefore, the decision on the point was principally based on construction of the article. Further, while elaborating the second ground on which its decision rested the Cowl has observed that when Section 107 of the 1913 Act was replaced by Section 224 in the 1935 Act, Sub-section (2) of Section 224 was newly introduced and the idea presumably was to nullify the effect of the decisions of different High Courts but the expression ''the idea presumably was'' itself clearly suggests that that wax not the, definite opinion of the Court. ...In our view, on pure construction of Section 224(2) and amended Article 227 (5) it is clear that judicial supervision or superintendence,

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though limited in extent did vest and does vest in the High Court.

(The emphasis has been supplied by us.)

104. We are in respectful agreement with the above observations and we do not find it possible to hold that there was no power of judicial superintendence left in the High Courts u/s 224 of the 1935 Act or that the Supreme Court has decided in Waryam Singh''s case that such a power did not exist in the High Courts under the said Section 224. What actually the word ''restored'' used by the Supreme Court in Waryam Singh''s case meant was that while u/s 224 the power of superintendence conferred upon the High Courts was a much truncated power compared to what it was under the said Section 107, Article 227 had restored to the High Courts the full power of superintendence which was vested in them u/s 107. Further, as pointed out in the first sentence of the passage from Waryam Singh''s case quoted above Article 227 of the Constitution amplified that power to include within its ambit not only Courts but also tribunals.

105. For the above, reasons we hold that no appeal under Clause 15 of the Letters Patent of this High Court lies against the decision of a single Judge in a proceeding under Article 227 of the Constitution.

106. We will now examine whether Articles 226 and 227 of the Constitution stand on the same footing, it was submitted by Mr. B. A. Desai and Mr. Deshpande that they stand on the same footing and, therefore, and appeal would lie in respect of both; while according to Miss Jaising and Mr. Deshmukh also-, though they stand on the same footing, the result would be that no appeal would lie in either of these proceedings. The said Full Bench in para. 65 of its judgment has held that even if the Letters Patent applied to proceedings under Articles 226 and 227, and appeal against the judgment of a single Judge in these proceedings would be barred by the express terms of Clause 15 because the power under Article 226 is supplemental to, and in! furtherance of, the power of superintendence under Article 227. With respect, we are unable to agree with the conclusion reached by the said Full Bench. In our opinion, both these Articles stand on an entirely different footing. The historical source and origin of each of these two Articles and the models upon which they are patterned are entirely different. This has been made sufficiently clear by us earlier in this judgment while tracing the history of this High Court and the sources of its different jurisdictions. These two powers are to be found in two separate Articles. The power of superintendence under Article 227 is over all Courts and tribunals. Its ancestors in the direct line are Section 15 of the Indian High Courts Act, 1861, Section 107 of the Government of India Act, 1.915, and Section 224 of the Government of India Act, 1935, under which it was exercisable over Courts subject to the High Court''s appellate jurisdiction. The direct ancestor of the power under Article 226 is the writ jurisdiction possessed by the Chartered High Courts on the Original Side. Under Article 226 directions, orders or writs can issue to any person or authority, including any Government. The power under Article 227 is exercisable only over all Courts and tribunals throughout the territories in relation to which

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the High Court exercises jurisdiction. By no stretch of imagination can the writ of habeas corpus or mandamus or quo warrantor or prohibition be ever said to be part of the power of superintendence. The power to issue a writ of certioretr is also not a part of the power of superintendence, though at times a contention has been raised that it is. So far as the old prerogative writ jurisdiction was concerned, the power to'' issue these writs was held to be an exercise of original jurisdiction. It was expressly so held with respect to a writ of habeas corpus in Mahomedalli Allabux v. Ismailji Abdulali, with respect to a writ of certiorari in Ryots of Garabandho and other villages v. Zamindar of Parlakimedi, and Raghunath Keshav Khadilkar v. Poona Municipality and with respect to a writ of quo warranto in Hamid Hasan Nomani v. Banwarilal Roy. In the last-mentioned case the Judicial Committee of the Privy Council held (p. 93(2), para. 17):

In their Lordships'' opinion any Original Civil Jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of Ordinary Original Civil Jurisdiction.

107. Turning now to the power to issue directions'', orders or writs under Article 226 of the Constitution, as seen above, the Supreme Court in Election Commission, India v. Saka Venkata Rao, at p. 212 pointed out that the makers of the Constitution, when wanting to provide a quick and inexpensive remedy for the enforcement of fundamental rights, took as their model the prerogative writs which the Courts in, England had developed and the jurisdiction to issue which the three Chartered High Courts on their Original Side had inherited from the Supreme Court and included in. it also the power to issue such directions, orders or writs for any other purpose, conferring this power upon all High Courts. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, , the Supreme Court observed (p, 84):

.. .This article (that is, Article 226) is caulked in compreltensive phraseology and it ex facie confers a. wide umbers on the High Courts to reach injustice waterier it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression ''nature'', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue direction, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 220 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction, defeats the purpose of the article itself. To say this is not to say that the High Courts can

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function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T.C. Basappa Vs. T. Nagappa and Another, , and P.J. Irani Vs. The State of Madras, .

(The emphasis has been supplied by us.)

In Romesh Thappar Vs. The State of Madras, the Supreme Court, while referring to Article 32 of the Constitution, said (p, 126, para. 5):

...That Article does not merely confer power on this Court, as Article 220 does on the High Courts, to issue certain writs for the enforcement of the rights conferred by Part III, or for any other purpose, as part of its general jurisdiction.

(The emphasis has been supplied by us.)

Thus, according to the Supreme Court, the power of the High Court under Article 226 to issue directions, orders and writs is "part of its general jurisdiction". In State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, after reviewing the earlier decisions, including the decision of the Calcutta High Court in Budge Budge Municipality v. Mongru Mia, already referred to earlier by us, the Supreme Court held (p. 951(2), para. 9):

...It is, therefore, clear from the nature of the power conferred under Article 226 of the Constitution and the decisions on the subject that the High Court in exercise of its power under Article 220 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and provisional jurisdictions, is exercisable-throughout the territories in relation to which it exercises jurisdiction and may, fur convenience. In: described as extraordinary original jurisdiction.

(The emphasis has been, supplied by us.)

This decision of the Supreme Court clearly shows that in exercising its power under Article 226 the High Court exercises original jurisdiction as contrasted with its appellate or provisional jurisdiction and the use of the expression "extraordinary original jurisdiction" in relation to it is merely a convenient description. The facts in that case before the Supreme Court were that in a petition under Article 226 filed to quash an order of assessment of the Additional Collector, Benaras, passed under the provisions of the U.P. Agricultural Income Tax Act, 1949, a single Judge of the Allahabad High Court quashed the said order. In 1956 the said Act was replaced first by an Ordinance and then by an Act under which assessments made inter alia by the Additional Collectors were retrospectively validated and a right was conferred upon any party to a proceeding under the said Act of 1949, in which any assessment made by an Additional Collector was set aside merely on the ground that the assessing authority had no jurisdiction to make the assessment, to apply for a review of the said proceeding. The State of Uttar Pradesh thereupon filed a review

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application before the same Judge of the Allahabad High Court, which application was rejected. An appeal to a Division Bench of the said High Court against the decision of the single Judge also failed. A preliminary contention which was raised before the Supreme Court was whether an appeal lay under Clause 10 of the Letters Patent of the said High Court. The said Clause 10 corresponds to Clause 15 of the Letters Patent of the Calcutta, Bombay and Madras High Courts. The Supreme Court held that the order rejecting the petition was a judgment which was appealable under the said Clause 10. It is in this connection that the Supreme Court''s approval of the judgment of the Calcutta High Court in the case of Budge Budge Municipality v. Mongru Mia, becomes highly relevant, because, as we have seen above, in that case the Calcutta High Court decided that the judgment of a single Judge in a proceeding under Article 226 of the Constitution is appealable under Clause 15 of the Letters Patent.

108. In The Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ramtahel Ramanand, the Supreme Court held the proceeding under Article 226 to be "an original proceeding". In Shea Prasad v. The State of Uttar Pradesh, the Allahabad High Court held that all proceedings in Courts are either civil or criminal. The Allahabad High Court, after a detailed consideration of various authorities, both of Indian and foreign Courts, held that all proceedings are either civil or criminal, this qualification being based on fundamental principles, and that there is nothing in our Constitution to suggest that these fundamental principles stood modified on January 26, 1950. It further held that the rights conferred under Part III of "the Constitution were ordinary civil rights which were enjoyed by the citizens before 1950 and the Constitution merely raised them to the status of fundamental rights, which meant that the State could not infringe them, and that, therefore, the proceedings under Article 226 were civil proceedings. The position that proceedings under Article 226 are civil proceedings has also been accepted by the Supreme Court in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, The Supreme Court held (p. 1823, para. 16):

On a careful review of the provisions of the Constitution, we are of the opinion that; there is no ground for restricting the expression ''civil proceeding'' only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 220, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to net in exercise of the powers conferred upon them by revenue statutes.

In the case of Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, , the Supreme Court reaffirmed what was held in Narayan Row''s case and said (p. 1447-8, para. 9):

...A proceeding under Article 2126 for a writ to bring up a proceeding for consideration must be a civil proceeding, if the original proceeding concerned civil rights.

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This position was reiterated by the Supreme Court in Arbind Kumar Singh Vs. Nand Kishore Prasad and Others, .

109. We have been shown only one decision, namely, that of a Division Bench of the Gujarat High Court in Gariadhar Gram Panchayat Vs. Nanubhai S. Desai and Another, , in which the Gujarat High Court took the view that when a writ petition is filed under Article 226 of the Constitution challenging the decision of an authority or tribunal, all that the High Court is doing is to exercise a power of revision, and, therefore, irrespective of whether the decision of the authority or tribunal was challenged under Article 227 or 226, an appeal from the judgment of a single Judge in such a petition is excluded by the terms of Clause 15 of the Letters Patent. This decision is directly contrary to the above decisions of the Supreme Court which were not brought to the notice of the Court; and has been overruled by a Full bench of the Gujarat High Court in Patel Kashiram Lavjibhai v. Narottamdas Bechardas, in which it was held that in such a petition under Article 226 the High Court was exercising original Jurisdiction and if the judgment was given by a single Judge of the High Court, an appeal would lie under Clause 15 of the Letters Patent.

110. Various decisions have pointed out the difference between Articles 226 and 227 of the Constitution as also between a writ of certiorari and an order made in the exercise of the power of superintendence under Article 227. In Shiva Nathaji v. Joma Kashinath ILR (1883) 7 Bom. 341 , the power of superintendence of a superior Court was described as a visitatorial power. A Full Bench of the Allahabad High Court in Aidal Singh and Others Vs. Karan Singh and Others, , held that the Constitution treats the power to issue writs, orders and directions under Article 226 and the power of superintendence under Article 227 as two separate and distinct powers and the fact that under Article 226 orders can also be issued to Courts and tribunals over which the High Court has the power of superintendence did not make any difference. The Full Bench of the Allahabad High Court pointed out that the Supreme Court, though it possesses the power of issuing writs, orders and directions under Article 32, does not possess the power of superintendence. The distinction between these two powers under Articles 226 and 227 has been pointed out elaborately and with great erudition by Beg J., in that case. The learned Judge has pointed out that though in some cases the two Articles might be supplementary or they may seem to overlap, the powers exercised under them are not identical. In Hudi Goshaon Vs. Sudi Goshaon and Others, the Punjab High Court pointed out that proceeding under Article 226 are not original proceedings and that while under Article 226 the tribunal to which a writ is to issue is a necessary party, it is not so in the case of a proceeding under Article 227.

111. In Mahomed Usman Rahimtoola Vs. Labour Appellate Tribunal, Bombay, in an application for a writ of certiorari under Article 226 of the Constitution, this High Court held that when the High Court issues a high prerogative writ of certiorari, it directs the Tribunal against which it is acting to transmit its record to

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the Court and quashes the order which the Tribunal has passed, and that in issuing this writ, the Court is not acting as a Court of appeal and, therefore, the Court has no power to go further and direct the Tribunal to hear the matter again or to deal with that matter in a manner directed by the High Court,

112. In M.D. Thakar Vs. Labour Appellate Tribunal and Another, the Bombay High Court reiterated what it had held in the earlier case and further pointed out that the power of superintendence over tribunals under Article 227 of the Constitution was a power which had never been exercised by the High Courts in India and that it was a different power than the one to issue a writ of certiorari and that, therefore, whenever a case of interference with the decision of a Labour Court or Tribunal comes up, it is necessary to bear in mind whether the High Court is acting in exercise of jurisdiction in respect of a high prerogative writ or is acting under Article 227 of the Constitution.

113. We would like to point out that the above observations were made with reference to an application for a writ of certiorari simplidter. Under Article 226, however, the power of the High Court is much wider than merely issuing the same writs as were and are being issued by the Courts in England and previously by the three Chartered High Courts in India in exercise of their writ jurisdiction on the Original Side. Further, the power under Article 226 includes not only the power to issue writs other than prerogative writs but also directions and. orders. It is a wide power and, as pointed out by the Supreme Court in Dwarka Nath v. Income Tax Officer, Special Circle, D. Ward, Kanpur, (at p. 84-85) it enables the High Courts, subject to certain limitations which are implied in the Article or which may be evolved to direct the power under the Article through defined channels, to mould the reliefs to meet the peculiar and complicated requirements of this country.

114. In Southern Roadways (P.) Ltd. Vs. P. Methurai Veeraswami (died) M. Dhanapalan and Others, , a Full Bench of the Madras High Court pointed out that the proceedings under Article 226 are original in nature and founded on the rights of parties aggrieved, with a view to keep the orders of statutory tribunals within the bounds, of law and that the merits of the original controversy could not, therefore, be the concern of the Court in a proceeding under Article 226, It further held that this being an original proceeding, the judgment of a single Judge in this proceeding was appealable under Clause 15 of the Letters Patent. The Supreme Court in The Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ramtahel Ramanand, has also pointed out (in para. 12 of the judgment at p. 1603) that Articles 226 and 227 are different in their operation.

115. The position, therefore, is that a proceeding under Article 226 of the Constitution is an original proceeding and if the original proceeding which led to the proceeding under Article 226 concerned civil rights, the proceeding under Article 226 would be an original civil proceeding. A proceeding under Article 226 is not a proceeding for invoking the High Court''s power of revision or superintendence. Though in the case of a writ of certiorari and the exercise of

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power of superintendence under Article 227, it may at the first blush appear that there is no difference, on a closer examination it is seen that this is not so. These two powers are separate and distinct, conferred upon the High Court by different Articles and operate in different fields, though it may be that in some cases the end result may be the same. The fact that the same result, can be achieved by two different processes does not mean that the two processes by which it is achieved are also the same. It would, therefore, not be correct to equate Article 226 with Article 227 and to hold that Article 226 also confers a power of superintendence and that, therefore, an appeal against the judgment of a single Judge in a proceeding under Article 226 is expressly barred. We do not find in Clause 15 any exclusion of a right of appeal against the judgment of a single Judge in a proceeding under Article 226.

116. Relying upon para. 62 of the judgment of the said Full Bench it was argued by Mr. Deshmukh that chap. XVII of the Appellate Side Rules, 1960, itself excludes a right of appeal from the judgment of a single Judge; in a proceeding under Article 226 as also under Article 227. In support of this argument reliance was placed upon the difference in the language to be found in Rules 1 and 18 of the said Chapter. Under Rule 1, every application under Article 226, if the matter in dispute is or has arisen substantially outside Greater Bombay, "is to be heard and disposed of by a Division Bench to be appointed by the Chief Justice". Rule 18 states that certain applications under Article 226 or 227 or under Article 227 read with Article 226 are to be "heard and finally disposed of by a single Judge to be appointed in this behalf by the Chief Justice". Relying upon this difference in the language it was argued that the use of the phrase "heard and finally disposed of" in connection with the applications to be heard by a single Judge clearly showed that no appeal from the judgment of that single Judge was contemplated by the Appellate Side Rules. We are unable to accept this argument The logical sequitur of this argument would be that when a Division Bench hears an application under Article 226 the matter is not finally disposed of, but it is finally disposed of when a single Judge hears it. This would be illogical. When a Court consisting of either a single Judge or a Division Bench hears and disposes of a matter, it is finally disposed of so far as that particular Judge or Division Bench is concerned, and the fact that Rule 18 uses the words "finally disposed of" while Rule 1 uses the words "disposed of" makes no difference whatever. In either case, the matter when decided is "finally disposed of".

117. Mr. Deshmukh also urged that the amendment made in Section 141 of the Code of Civil Procedure, 1908, by the CPC (Amendment) Act, 1976, showed that Parliament did not want a Letters Patent appeal from the judgment of a single Judge in a writ petition under Article 226. Under the said Section 141 the procedure provided in the Code in regard to suits is to be followed as far as can be made applicable in all proceedings in any Court of civil jurisdiction. An Explanation was introduced in this section by the said Amendment Act of 1976. Under it, the expression ''proceedings'' is not to include "any proceeding under Article 226 of the Constitution." This was the part of the said section which was

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relied upon by Mr. Deshmukh. We find no substance whatever in this contention, As pointed out by the Supreme Court in Election Commission, India v. Saka Venkata Rao, the intention of the makers of the Constitution in enacting Article 226 was to provide a quick and inexpensive remedy for the enforcement of fundamental rights and for other purposes such as enforcement of legal rights. Various High Courts had taken the view that by reason of the provisions of Section 141, the procedure in regard to suits applied to proceedings under Article 226. Parliament felt that it would not be appropriate that so formal a procedure which nowadays protracts the hearing and final disposal of a suit should be applicable to a remedy under Article 226, for to do so would be to defeat the purpose of expedition and inexpensiveness for which this Article was enacted in the Constitution and, therefore, by the said amendment expressly excluded a proceeding under Article 226 from the meaning of the expression ''proceedings'' in Section 141 in order to reflect the intention of the framers of the Constitution.

118. For the above reasons, we hold that an appeal lies under Clause 15 of the Letters Patent of this High Court against the judgment of a single Judge in a proceeding under Article 226.

119. The Supreme Court and all other High Courts have taken the same view as we have done with respect to the appealability from the judgment of a single Judge in a proceeding under Article 226. Some of those decisions,, most of them already referred to earlier, are M. Ramayya Vs. The State of Madras and Another, Budge Budge Municipality v. Mangru Mia; Raj Kishan Jain Vs. Tulsi Dass etc., Barham Dutt and Others Vs. Peoples'' Co-operative Transport Society Ltd., New Delhi and Others, Indo-Mercantile Bank Ltd- v. Commissioner, Quilon Municipality, State of Uttar Pradesh v, Vijay Anand, Southern Roadways (P.)Ltd v. P.M. Veeraswami, The Notified Area Committee and Another Vs. Sri Ram Singhasan Prasad Kalwar, Patel Kashiram Lavjibhai v. Narottamdas Bechardas.

120. So far as an interlocutory order passed by a single Judge appointing a Receiver in a proceeding under Article 226 is concerned, the learned Advocate-General relied upon the decision of a Division Bench of the Gujarat High Court in Chhotalal Jivabhai v. Vadilal Mehta at pp. 860-61, and submitted that under Clause 15 of the Letters Patent If an interlocutory order was a judgment within the meaning of that expression in that clause, then an appeal would lie irrespective of the fact whether the final order in that matter was appealable or not. As we have already held that an appeal lies under Clause 15 against the judgment of a single Judge in a proceeding under Article 226, it is unnecessary to discuss this question because this High Court has consistently taken the view, which none has disputed before us, that an interlocutory order appointing a receiver is a judgment within the meaning of that expression in Clause 15.

121. The only question which now remains to be considered is as to what would happen in a case in which an application is filed under Article 227 read with Article 226.

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122. In Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , an application was filed both under Article 226 and Article 227 of the Constitution to challenge a decision of the Election Tribunal. A contention was raised that such a petition was not maintainable. This contention was negatived by the Supreme Court in the following words (p. 243, para. 20):

...It may also be noted that while in a ''certiorari'' under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of ''certiorari'' and for other reliefs was maintainable under Articles 22C and 227 of the Constitution.

After considering the matter on the merits the Supreme Court allowed the appeal and passed the following order in these words (p. 249, para. 39) :

...Under the circumstances, the proper order to pass is to quash the decision of the Tribunal and remove it out of the way by ''certiorari'' under Article 226, and to set aside the election of the first respondent in exercise of the powers conferred by Article 227.

123. Two High Courts, namely, the High Courts of Allahabad and Punjab, have been faced with the same question as has now fallen for our determination and both have reached an identical conclusion. A Full Bench of the Allahabad High Court in Aidal Singh v. Koran Singh, found the following solution (p- 433, para. 120):

...There may be cases where both the Articles 226 and 227 are applicable. In cases where the relief can be given under both, the Court should exercise its power under Article 226 on the principle that where a specific remedy is provided, the general provisions of law should not be resorted to. In any case, if a party is otherwise entitled to a right of appeal against an order under Article 226, the fact that the same relief could be granted under Article 327 is no reason for depriving it of the said right where the party has given the application itself under Article 220, has claimed its right to relief under the said Article, and the case itself has been entertained and disposed of by the Court under the same Article.

The Punjab High Court in Raj Kishan v. Tulsi Dass, after referring to the above decision of the Supreme Court, held as follows (p. 294, para. 9):

...when same facts allow an aggrieved person to move this Court under Articles 226 and 227 of the Constitution then in view of the wider scope of Article 226 it must be assumed that the petitioner intended to move this Court primarily under Article 226 of the Constitution particularly when an order under this Article is open to Letters Patent Appeal. It would be unnatural to assume that the aggrieved person would invoke the powers of this Court under a provision which is less wide in scope than the one with wider scope.

It follows that in substance the appellant''s application was both under Article

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226 and Article 227 of the Constitution and that the judgment of the Single Judge amounted to dismissal of the petition under both the Articles. It is conceded before me and this is in fact well established, that if the petition was under Article 226 then an appeal under Clause 10 of the Letters Patent would be competent.

In Barham Dutt v. Peoples'' Co-operative Transport Society Ltd. New Delhi, at pp. 26, 29, an application under Articles 226 and 227 of the Constitution was filed in the Punjab High Court: for quashing an order of the State Transport Authority. A learned single Judge of that High Court allowed the said petition and quashed the impugned order and in exercise of his power under Article 227 of the Constitution further directed that there should be a fresh decision on the appeals by the Chief Commissioner who should re-hear and re-decide the matter in accordance with law.. In a Letters Patent appeal filed against the said judgment, a preliminary objection was raised that the direction given by the single Judge being under Article 227 was not appealable under Clause 10 of the Letters Patent of the Punjab High Court which corresponds to our Clause 15. The Court held that the mere fact that some further directions had been given by a single Judge under Article 227, which could not by themselves form the subject-matter of an appeal under Clause 10, should not be construed to operate as a bar to take away the right of appeal in so far as the order of the Judge quashing the impugned order in exercise of his power under Article 226 was concerned because the directions to the Chief Commissioner were only of an ancillary nature and the entire appeal depended upon the correctness of the decision of the single Judge quashing the impugned order. The Court further held that a suitor should not be deprived of his valuable statutory right of appeal against a decision under Article 226 merely because some further directions have been given in exercise of the powers of superintendence under Article 227 of the Constitution.

124. We are in respectful agreement with what has been! held by the Allahabad and and Punjab High Courts in the above three cases. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this would not, and ought not to be held, to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

125. In view of the conclusions we have reached, we hold that the case of Shankar Naroba Salunke v. Gianchand Lobhachand Kothari was wrongly decided except for the conclusion reached in that case that no appeal lies under Clause 15 of the Letters Patent against the judgment of a single Judge of the High Court in a proceeding under Article 227 of the Constitution, but the reasons given in

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support of that conclusion are not correct; and, therefore, except to the extent mentioned above, we hereby overrule the decision in that case.

126. To summarise our conclusions:

(1) This Special Bench was validly constituted under R. 876 of the Original Side Rules, 1980.

(2) The Division Bench consisting of Madon and Shah JJ., and the Division Bench consisting of Madon and Kania JJ., had the power to direct that the papers in the above four Appeals should be placed before the Chief Justice to constitute, if he so thought fit, a larger Bench to decide the question of maintainability of the said Appeals.

(3) The fact that under Article 133(1) of the Constitution a certificate has been granted by a Bench deciding a matter to enable one of the parties in that matter to file an appeal to the Supreme Court does not preclude a larger Bench from considering whether the point decided by that Bench was correctly decided.

(4) The Constitution of India was the result of a process of evolution. It did not make a break with the past, It preserved and put its imprimatur upon the continuance of institutions, including the High Courts, and of the laws, including the Letters Patent, which were in existence at the commencement of the Constitution.

(5) The Government of India Acts, and the Indian Independence Act, 1947, were constitutional laws and not ordinary laws.

(6) It is not correct to describe the Indian High Courts, Act 1861, as having been enacted by the ''Imperial'' Legislature or the Letters Patent issued thereunder as having been issued by the ''Imperial'' Sovereign, because at the time when the said Act was passed and the said Letters Patent issued, the territories in India under the British rule were a Crown Colony, Queen Victoria having been proclaimed "Empress of India" only in 1876.

(7) Under the Constitution, Parliament has by ordinary law the power to constitute and organize, that is, to create, new High Courts as also to enlarge or abridge the jurisdictions of all High Courts, including the High Courts which were in existence at the commencement of the Constitution.

(8) Articles 226, 227 and 228 of the Constitution did not confer upon the High Courts wholly new powers not possessed previously by existing High Courts or not reflected in any of the powers or jurisdictions possessed by them at the commencement of the Constitution. The power under Article 226 of the Constitution is modelled upon the high prerogative writ jurisdiction possessed by the three Chartered High Courts in the exercise of their original jurisdiction, though under Article 226 that power has been made much wider and conferred upon all High Courts, Article 227 derives its origin from Section 15 of the Indian High Courts Act, 1861, Section 107 of the Government of India Act, 1915, and

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Section 224 of the Government of India Act, 1935. Such a power also existed in the former Supreme Court of Judicature at Bombay under Clause 55 of its Letters Patent with respect to the Court of Requests, the predecessor of the Presidency Small Cause Court at Bombay, and the Court of Quarter Sessions. Article 228 is in terms similar to Section 225 of the Government of India Act, 1935. The powers conferred by these three Articles, however, have been made part of the Constitution and, therefore, cannot be abridged, adversely affected or taken away except by an amendment of the Constitution.

(9) By reason of the provisions of Section 38(1) of the Interpretation Act, 1889, of England and Section 8 of the General Clauses Act, 1897, the words "pursuant to Section 108 of. the Government of India Act" occurring in Clause 15 of the Letters Patent were to be read as "pursuant to Section 223 of the Government of India Act, 1935" when the said Act came into force; and by the same process of interpretation or on the principle of interpretation underlying the! abovementioned two sections, on the coming into force of the Constitution the words in Clause 15 which were to be read as "pursuant to Section 223 of the Government of India Act, 1935" are now to be read as "pursuant to Article 225 of the Constitution?''.

(10) The two conditions contained in the opening part of Article 225 of the Constitution which make the provisions of that Article "Subject to the provisions of this constitution and to the provisions of any law of the appropriate Legislature" are not words of limitation.

(11) The phrase "Subject to the provisions of this Constitution" means "Subject to what is provided in. the Constitution", which would include powers and jurisdictions conferred upon the High Courts by the other Articles in the Constitution, including Articles 226, 227 and 228. The words "Subject to" would include both enlargement of jurisdiction as also abridgement of jurisdiction.

(12) The power of the High Courts under Article 225 of the Constitution to make rules and regulate sittings! of the Court includes the power to make such rules and regulate sittings with respect to the exercise of power under Articles 226, 227 and 228.

(13) Articles 226, 227 and 228 of the Constitution do not contain any inbuilt rule-making power. Such power in respect of these Articles is to be found in Article 225 only.

(14) There is a difference between the nature and character of a power and the exercise of that power. The High Court''s power to make rules and to regulate sittings of the Court is one which relates to the exercise of the powers and jurisdictions of the High Courts, including the powers conferred by Articles 226 and 227 of the Constitution, and does not relate to the nature and character of those powers.

(15) The right of appeal against the judgment of a single Judge contained in

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Clause 15 of the Letters Patent is dependent upon the Rules of the High Court as to whether such Rules provide for any particular matter or matters to be heard and decided by a single judge. The right to so provide by the Rules has been expressly conferred upon the High Courts by Article 225 of the Constitution and it is not open'' to any party to say that his matter should be heard by any particular number of Judges.

(16) A right of appeal does not abridge, limit or adversely affect the powers of the High Court under Article 226 or 227 of the Constitution.

(17) An appeal is a continuance of the original proceeding and an appeal filed against the decision of a single Judge in a proceeding under Article 226 of the Constitution cannot be equated with a second application filed in the High Court for the same relief.

(18) There does not appear to have been any Despatch of the Secretary of State forwarding the new Letters Patent for any of the Chartered High Courts including the new Letters Patent of 1865 in the case of the High Court of Judicature at Bombay.

(19) It is not permissible in order to interpret the Letters Patent issued in 1865 in respect of the Bombay High Court to look at the Despatch dated May 14, 1862, from the Secretary of State forwarding the Letters Patent for the establishment of the High Court of Judicature for the Presidency of Bengal. Assuming a similar Despatch accompanied the Letters Patent of 1862 for the establishment of the High Court of Judicature at Bombay or that such a Despatch enclosed a copy of the said Despatch in respect of the Letters Patent of the Calcutta High Court or made a reference to them, it is still not permissible to look at this Despatch in order to interpret the mew Letters Patent issued in 1865 in view of the marked change in the language of cl, 15 of the 1865 Letters Patent from that of Clause 14 of the 1862 Letters Patent.

(20) In any event, the Secretary of State''s Despatch would be in the nature of Explanatory Notes or at the highest can be equated with the Statement of Objects and Reasons to a Legislative Bill and cannot afford any aid to interpretation of the Letters Patent.

(21) The expression ''judgment'' in Clause 15 of the Letters Patent is used without any qualification or limitation as to the jurisdiction in the exercise of which such judgment is given.

(22) Except in, the cases expressly excluded by Clause 15 of the Letters Patent, an appeal from the judgment of a single Judge will lie to the High Court in every case provided the decision amounts to a ''judgment'' within the meaning of that expression in Clause 15.

(23) Section 224 of the Government of India Act, 1935, did not extinguish or destroy the power of judicial superintendence which was vested in the High Courts u/s 107 of the Government of India Act, 1915. It merely restricted it to

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judgments of inferior Courts which judgments were subject to appeal or revision. In other words, the power of judicial superintendence which was taken away by the said Section 224 was only with regard to judgments which were not subject to appeal or revision.

(24) By reason of the provisions of Section 38(1) of the Interpretation! Act, 1889, and Section 8 of the General Clauses Act, 1897, the words "the power of superintendence under the provisions of Section 107 of the Government of India Act" were to be read as "the power of superintendence under the provisions of Section 224 of the Government of India Act, 1935" when the 1935 Act came into force. By the same process of interpretation or the principle of interpretation underlying the above two sections, when the Constitution of India came into force, the words "the power of superintendence under the provisions of Article 227 of the Constitution" are to be read for the words "the power of superintendence under the provisions of Section 224 of the Government of India Act".

(25) An appeal against the judgment of a single Judge in a proceeding under Article 227 of the Constitution is expressly barred by Clause 15 of the Letters Patent.

(26) The power of the High Court under Article 226 of the Constitution to issue directions, orders and writs is not supplemental to or in furtherance of -the power of superintendence under Article 227.

(27) Articles 226 and 227 of the Constitution operate in different fields, i

(28) In! exercising its power under Article 226 of the Constitution, the High Court exercises original jurisdiction as contrasted with its appellate and provisional jurisdictions. Where the original proceeding which Jed to the proceeding under Article 226 concerned civil rights, the proceeding under Article 226 would be an original civil proceeding,

(29) Clause 15 of the Letters Parent does not exclude a right of appeal against the judgment of a single Judge in a proceeding under Article 226 of the Constitution.

(30) The words "heard and disposed of" in R. 1 of chap. XVII of the Bombay High Court Appellate Side Rules, 1960, and the words "heard and finally disposed of" in R. 18 of the said chap. XVII mean one and the something and they do not imply any exclusion of a Letters Patent appeal against the judgment of a single Judge in a proceeding under Article 226 of the constitution.

(31) The amendment of Section 141 of the Code of Civil Procedure, 1908, by the CPC (Amendment) Act, 1976, whereby under the Explanation which was inserted into that section, the expression ''proceedings'' is not to include "any proceedings under Article 226 of the Constitution" was not for the purpose of showing that no Letters Patent appeal lies against the judgment of a single Judge in a proceeding under Article 226. The object in excluding these proceedings from the provisions

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of the said &. 141 was not to encumber with the formal procedure of the suit, the quick and inexpensive remedy provided by the framers of the Constitution in! Article 226.

(32) An appeal lies under Clause 15 of he Letters Patent against the judgment of a single Judge in a proceeding under Article 226 of the Constitution.

(33) Where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution and the party chooses to file his application under both these Articles, the Court ought to treat the application as being one made under Article 226.

(34) If in deciding such an application made under Articles 226 and 227 of the constitution, the Court gives in the final order ancillary directions which pertain to Article 227, this would not deprive the party of his right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

(35) An appeal under Clause 15 of the Letters Patent also lies against an interlocutory order passed by a single Judge appointing a receiver in a proceeding under Article 226 of the Constitution.

(36) The case of Shankar Naroba Salunke v. Gianchand Lobhachand Kothari was wrongly decided except for the conclusion reached in that case that no appeal lies under Clause 15 of the Letters Patent against the judgment of a single Judge of the High Court in a proceeding under Article 227 of the Constitution, but the reasons given in support of that conclusion are not correct. Except to the extent mentioned above, the said decision is overruled.

127. We may add that we see neither principle nor justice nor warrant in law for denying a right of intra-Court appeal against the judgment of a single Judge in a proceeding under Article 226 of the Constitution. If no such right of appeal were to exist, the aggrieved party would be forced to apply to the Supreme Court under Article 136 of the Constitution for special leave to appeal. The whole object of ,the framers of the Constitution in enacting Article 226 was, as pointed out by the Supreme Court in Election Commission, India v. Saka Venkata Rao, Dwarka Natti v. Income Tax Officer, Social Circle, D Ward, Kanpur, to provide a quick and inexpensive remedy for the enforcement of fundamental rights and for other purposes such as the enforcement of other rights recognized by law to reach injustice wherever it is found. This object would not be advanced, but on the contrary would be hindered if intra-Court appeals were not allowed. It must not be forgotten, that the appellants in proceedings, under at. 226 are not only the Union of India, the State of Maharashtra, Government Undertakings, big corporations, rich businessmen or large land-holders. Proceedings under Article 226 are often filed by poor workmen who have been wrongfully dismissed from service. They are equally filed by students who have been wrongly denied admission into colleges and universities. They are filed by small farmers who barely manage to eke out a livelihood. They are also filed by persons belonging

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to backward and disadvantaged classes for protection of their fundamental rights under Articles 14, 15, 16 and other fundamental rights. It would be putting these parties to the greatest inconvenience and hardship and burdening them with expense which they cannot bear if they were to be forced to go to New Delhi or engage lawyers there to file an application in the Supreme Court for special leave to appeal were they to lose before a single Judge. It is not as if every appeal against such judgment fails. Quite a few appeals filed from the judgments of single Judges have succeeded. The principle of social justice underlying our constitution requires that same justice and the same mode of seeking justice must be available to both the rich and the poor, not merely theoretically but in actual practice. To subject poor parties who seek to vindicate their rights either to find the means to incur the great expense in approaching the Supreme Court in appeal or as a harsh alternative to forego, their rights and suffer the wrong and injustice done to them in silence would be contrary to this principle of social justice. Fortunately for these persons the law allows them the right of intra--Court appeal and a court should be loathe to take away that right unless forced to do so by a clear, express, unequivocal and mandatory provision of law. The law contains no such provision but on the contrary expressly confers this right.

128. In the result, we answer the questions framed by us as follows:

Question No. 1; An appeal lies under Clause 15 of the Letters Patent from the Judgment of a single Judge of the High Court in a petition under Article 226 of the Constitution of India filed either on the Original Side or the Appellate Side of the High Court.

Question No. 2: An appeal does not lie under Clause 15 of the Letters Patent from the judgment of a single Judge of the High Court in a proceeding under Article 227 of the Constitution of India.

Question No. 3: An appeal lies under cl, 15 of the Letters Patent from an interlocutory order made by a single Judge of the High Court appointing a receiver in a petition filed under Article 226 of the Constitution! of India.

Appeals Nos. 499, 479 and 480 of 1980 will now be placed for admission before the Division Bench constituted for this purpose to decide whether these Appeals deserve to be admitted on the merits or not.

Appeal No. 308 of 1979 will be placed for hearing and final disposal before the Division Bench constituted for this purpose.

129. There will be no order as to the costs of the hearing before us.

130. After the judgment in the above four Appeals was pronounced, Miss Jaising made an oral application in Appeal No. 587 of 1980 for a certificate under Articles 132(1) and 133(1) of the Constitution to enable respondent No. 1 in the said Appeal No. 587 of 1980, whom she represents, to file an appeal to the Supreme Court against this judgment. The questions which we have decided have been decided in the four appeals in which we have just delivered the

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judgment. We had permitted counsel in other matters to intervene in order to address arguments to the Court so that no point which may affect the determination of the said questions may be left unnoticed. The said Appeal No. 587 of 1980 is not before us. It is still pending admission and as yet has not been admitted. This application is, therefore, not maintainable, and we accordingly reject it.

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