ASWINI KUMAR GHOSH AND ANOTHER

v.

ARABINDA BOSE AND ANOTHER

1952

Oct. 27.

[PATANJALI SASTRI C.J., MUKHERJEA, DAS, VIVIAN BOSE AND GHULAM HASAN JJ.]

Supreme Court Advocates (Practice in High Courts) Act, 1951, s. 2—Advocate of Supreme Court—Right to appear in Original Side of Calcutta High Court without attorney—"Practice", meaning of—Interpretation of s. 2—Indian Bar Councils Act, 1926, ss. 4(2), 5(1), 8(1), 9(4), 14—Calcutta High Court Original Side Rules, Chapter I, rr. 37, 38—Bombay High Court Original Side Rules, Chapter I, r. 40—Interpretation of Statutes—Reference to title, statement of objects, punctuation, speeches, original Bill.

Section 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951, provided that "notwithstanding anything contained in the Indian Bar Councils Act, 1926 (XXVIII of 1926), or any other law regulating the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practise in that High Court every advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an advocate of that High Court":

Held by the Court (PATANJALI SASTRI C.J., VIVIAN BOSE and GHULAM HASAN JJ.—MUKHERJEA and DAS JJ. *dissenting*).—The practice of law in India generally involves the exercise of both the functions of acting and pleading on behalf of litigant parties, and when s. 2 of the abovesaid Act conferred upon an advocate of the Supreme Court the right to "practise" in any High Court, it is legitimate to understand that expression as authorising him to appear and plead as well as to act on behalf of suitors in all the High Courts including the Original Side thereof. It is fallacious to relate that expression as applied to an advocate either, on the one hand, to the court in which the advocate is enrolled, or, on the other, to the court in which he seeks to exercise the statutory right conferred on him. It must be related to the general constitution of the Bar in India as a single agency in dealing with the litigant public. A rule made by a High Court which denies to an advocate the right to exercise an essential part of his function by insisting on a dual agency on the Original Side is much more than a rule of practice and constitutes a serious invasion of his statutory right to practise, and the power of making such a rule, unless expressly reserved (as it was reserved by the Bar Councils Act) would be repugnant to the right conferred by s. 2; and as the Act does not reserve any such power, the statutory right of a Supreme Court advocate under s. 2 to plead as well as to act in the High Courts of Calcutta and Bombay in the exercise

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of their Original Jurisdiction cannot be taken away or curtailed by the rules of those courts, and any rule which the Calcutta High Court may have made in the past purporting to exclude any advocate from practising on the Original Side or from appearing and pleading unless he is instructed by an attorney cannot affect such right.

MUKHERJEA J.—The word "practise" when used with reference to an advocate is an elastic expression having no rigid or fixed connotation and the precise ambit of its contents can be ascertained only by reference to the rules of the particular forum in which the profession is exercised. When s. 2 of the Supreme Court Advocates (Practice in High Courts) Act, 1951, speaks of a Supreme Court advocate being entitled as of right to practise in any High Court, what it actually means is that he would be clothed by reason of this statutory provision with all the rights which are enjoyed by an advocate of that court, and his right to plead and to act would depend on the Bar Councils Act and the rules validly framed by that court, subject to this that no rule or provision of law would be binding which would affect in any way his statutory right to practise in that court solely by reason of his being enrolled as an advocate of the Supreme Court.

DAS J.—The words "to practise", used in relation to lawyers as a class, mean "to exercise their profession" which is their dictionary meaning and which is wide enough to cover the activities of the entire genus of lawyers. They are words of indeterminate import and have no fixed connotation or content. In their application to particular species of lawyers their meaning varies according to the scope and ambit of the profession of the particular species in relation to whom they may be used and such meaning has to be ascertained by reference to the subject or context. A Supreme Court advocate being entitled only "to appear and plead" in that court, when s. 2 authorised him "to practise" in any High Court, it must be taken to have meant that he was authorised to do in the High Courts all that he was entitled to do in the Supreme Court, namely, to appear and plead only. Alternatively the section must be taken to authorise every Supreme Court advocate to practise as of right in any High Court as advocates of that High Court do and the exercise of the profession of an advocate in a High Court by a Supreme Court advocate must involve the observance of the rules of practice of that High Court except to the extent they are abrogated by s. 2. That section has made the Supreme Court advocate a statutory advocate of the High Court where he goes to practise and as such he is bound by the rules of such High Court except such of them as are contrary to this new statutory right. Whichever of the two constructions is adopted, a Supreme Court advocate cannot appear in the Original Side of the Calcutta or Bombay High Courts unless he is instructed by an attorney.

Queen v. *Doutre* (L.R. 9 App. Cas. 745), *Powers of Advocates, In re* (I.L.R. 52 Mad. 92) and *Laurentius Ekka* v. *Dukhi Koeri* (I.L.R. 4 Pat. 766) referred to.

Per PATANJALI SASTRI C.J., VIVIAN BOSE and GHULAM HASAN JJ.—The *non-obstante* clause in s. 2 can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment. Sections 9(4) and 14(3) of the Bar Councils Act and s. 2 of the new Act cannot stand together. Whether by force of the *non-obstante* clause liberally construed or of the well established maxim of construction that the enacting part of an Act must, when it is clear, control the *non-obstante* clause when both cannot be read harmoniously, the new Act must have the effect of abrogating the powers reserved and continued in the High Courts by ss. 9(4) and 14(3) of the Bar Councils Act. MUKHERJEA and DAS JJ.—The *non-obstante* clause in s. 2 of the said Act removes only those provisions contained in the Bar Councils Act, 1926, and in any other law, which regulate the conditions subject to which a person not entered in the roll of advocates of a High Court may be permitted to practise in that High Court. Other provisions contained in the Bar Councils Act or other statutes, which lay down the conditions under which an advocate enrolled in the High Court is entitled to practise in the Original Side of that court stand unaffected by the Act. Even if the entire Bar Councils Act is excluded for the purpose of s. 2, the rules framed by the Calcutta and Bombay High Courts under their Letters Patent would remain valid and effective of their own force even without the saving provision contained in the Bar Councils Act and the Letters Patent would also remain in full force.

Per PATANJALI SASTRI C.J., MUKHERJEA, DAS, VIVIAN BOSE and GHULAM HASAN JJ.—Speeches made by members of the House of Parliament on the floor of the House are not admissible as extrinsic aids to the interpretation of statutory provisions.

State of Travancore-Cochin and Another v. *Bombay Co. Ltd. etc.* ([1952] S.C.R. 1112), *Administrator-General of Bengal* v. *Prem Lal* ([1895] 22 I.A. 107), *Krishna Aiyangar* v. *Nella Perumal* ([1920] 47 I.A. 33), *A.K. Gopalan* v. *The State of Madras* ([1950] S.C.R. 88) and *Debendra Narain Roy* v. *Jogesh Chandra Deb* (A.I.R. 1936 Cal. 593) referred to.

Held per PATANJALI SASTRI C.J., DAS, VIVIAN BOSE and GHULAM HASAN JJ.—The statement of objects and reasons annexed to a Bill, the form of the original Bill and the fact that certain words or phrases were added to or omitted from the original Bill are also not admissible as aids to the construction of a statute. MUKHERJEA J.—Judicial opinion on the point whether in construing a statute the statement of objects and reasons or the original form of the Bill or reports of committees can be referred to is not uniform. English Courts and the Privy Council have laid down that such extrinsic aids must be dismissed from consideration. But there are American decisions to the effect that the general history of a statute and the various steps leading up to an enactment including amendments or modifications of the original Bill and reports of Legislative Committees can be looked at for

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ascertaining the intention of the legislature where it is in doubt. The legislative history is, however, clearly inadmissible where there is no obscurity in the meaning of a statute.

Per MUKHERJEA and DAS JJ.—Punctuation is after all a minor element in the construction of a statute, and even if the orthodox view that it forms no part of the statute is to be regarded as of imperfect obligation and it can be loooked at as *contemporanea expositio*, it is clear that it cannot be allowed to control the plain meaning of a text.

Stephenson v. *Taylor* ([1861] 1 B.S. 101), *Clawdon* v. *Green* ([1868] L.R. 3 C.P. 511), *Duke of Devonshire* v. *Conor* (L.R. 1890 Q.B.D. 468), *Maharani of Burdwan* v. *Murtanjoy Singh* ([1886] 14 I.A. 30), *Pugh* v. *Ashutosh Sen* ([1928] 55 I.A. 63) referred to.

Judgment of the Calcutta High Court reversed.

ORIGINAL JURISDICTION: Petition (No. 160 of 1952) under article 32 of the Constitution of India for the enforcement of fundamental rights. The facts of the case and arguments of the counsel are stated fully in the judgment.

Petitioner No. 1 (Aswini Kumar Ghosh) in person.

B. Sen for the respondents.

N. C. Chatterjee (*S.N. Mukherjee* and *B. Sen*, with him) for the Incorporated Law Society, Calcutta High Court (Intervener No. 1)

Dr. N. C. Sen Gupta (*A. K. Dutt* and *V. N. Sethi*, with him) for the Secretary, Bar Association, Calcutta High Court (Intervener No. 2).

N. C. Chatterjee (*B. Sen*, with him) for Secretary, Bar Library, Calcutta High Court (Intervener No. 3).

C. K. Daphtary, Solicitor-General for India (*G. N. Joshi* and *J. B. Dadachanji*, with him) for the Secretary, Bar Association, Bombay High Court (Intervener No. 4).

K. B. Naidu for Secretary, Advocates' Association, Madras High Court (Intervener No. 5).

M. C. Setalvad, Attorney-General for India (Intervener No. 6).

1952. October 27. The judgment of Patanjali Sastri C.J. and Vivian Bose and Ghulam Hasan JJ. was delivered by Patanjali Sastri C.J. Mukherjea and Das JJ. delivered separate judgments.

PATANJALI SASTRI C. J.—This is an application under article 32 of the Constitution for relief in respect of an alleged infringement of the fundamental right of the petitioners under article 19 (1) (g) or, alternatively, under article 136 for special leave to appeal from a judgment of the High Court of Judicature at Calcutta rejecting their application for the same relief under article 226.

As the petitioners would clearly be entitled to relief under the one or the other form of remedy if their claim was well-founded, no objection was taken to the maintainability of the present proceeding, and we desire to guard ourselves against being taken to have decided that a proceeding under article 32 would lie after an application under article 226 for the same relief on the same facts had been rejected after due enquiry by a High Court. We express no opinion on that point.

The facts leading to this proceeding are not in dispute and may be briefly stated. The first petitioner is an Advocate of this Court and his name is also on the roll of Advocates of the High Court of Calcutta. As an Advocate of the latter Court he is entitled, under the relevant rules there in force, both to act and to plead on the Appellate Side but not to act or to appear, unless instructed by an Attorney, on the Original Side. On 18th July, 1951, he filed in the Registry on the Original Side a warrant of authority executed in his favour by the second petitioner to defend the latter in a pending suit. The warrant was returned on 27th July, 1951, with the endorsement that it "must be filed by an Attorney of this Court under the High Court Rules and Orders, Original Side, and not by an Advocate". The return was made by an Assistant in charge of Suit Registry Department, who is called as the first respondent to this petition. The second respondent is the Registrar, Original Side, who is alleged to have refused on the same ground to accept a warrant filed earlier in a company matter. It is conceded that the action of the respondents would be

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valid apart from the right claimed by the first petitioner as an Advocate of this Court under the Supreme Court Advocates (Practice in High Courts) Act, 1951, (hereinafter referred to as the new Act) which provides that such Advocates are "entitled as of right to practise" in any High Court in India. The petitioners, however, claimed that the right to practise thus conferred included also the right to act as well as to appear without the intervention of an Attorney on the Original Side, and moved the High Court under article 226 for issue of appropriate writs, orders or directions to the respondent for enforcement of the right denied to them. A Special Bench consisting of Trevor Harries C.J., Chakravartti and Banerjee JJ. heard the motion and dismissed it, holding that the first petitioner did not, on being enrolled as an Advocate of the Supreme Court, become entitled to act on the Original Side of the Court.

The second petitioner has since dropped out of these proceedings, and the first petitioner, who appeared in person and argued his case before us, is hereinafter referred to as the petitioner.

As the issues involved are of far-reaching importance to certain sections of the Bar at Calcutta and at Bombay, this Court directed notice of the proceeding to be served on the Incorporated Law Society, Secretary Bar Association, and Secretary, Advocates' Association, Calcutta High Court, and Secretary, Bar Association, Bombay High Court, and all of them appeared by their learned counsel, while the Attorney-General appeared in person as intervener. We have thus had the advantage of a full argument from all points of view.

A brief historical survey of the functions, rights and duties of legal practitioners in this country may facilitate appreciation of the contentions of the parties. Before the Indian High Courts Act of 1861 (24 and 25 Vic. Ch. 104) was enacted, there were, in the territories subject to the British rule in India, Supreme Courts exercising jurisdiction mainly in the

Presidency Towns and Sudder Courts exercising jurisdiction over the mofussil. Though the Supreme Courts were given, by the Charter Acts and the Letters Patent establishing them, power to enroll Advocates who could be authorised by the rules to act as well as to plead in the Supreme Courts, rules were made empowering Advocates only to appear and plead and not to act, while Attorneys were enrolled and authorised to act and not to plead. In the Sudder Courts and the Courts subordinate thereto, pleaders who obtained a certificate from those Courts were allowed both to act and plead. When the Supreme Courts and the Sudder Courts were abolished and their jurisdictions were transferred to High Courts under the statute of 1861, this differentiation in the functions of legal practitioners was continued in the High Courts under the notion, apparently, that the High Court, in the exercise of its Ordinary Original Jurisdiction, was the successor of the Supreme Court, and that, on the Appellate Side, it inherited the jurisdiction and powers of the Sudder Courts, with the result that Advocates were allowed only to appear and plead instructed by Attorneys empowered to act on the Original Side as in the Supreme Court, while on the Appellate Side, they were allowed both to act and plead as in the Sudder Courts. There was also another class of practitioners known as Vakils who were neither allowed to act nor to plead on the Original Side, but were allowed both to act and plead on the Appellate Side. Within a short time, however, the Vakils at Madras were permitted by a rule made by the High Court to appear, plead and act on the Original Side as well—*vide In the Matter of the Petition of the Attorneys*(1)—but the cleavage between the two jurisdictions, Original and Appellate, was maintained in the Calcutta and Bombay High Courts with modifications by means of rules framed by the respective High Courts from time to time. While this was the position in the High Courts in the three Presidency Towns of Calcutta, Bombay and Madras, no distinction

(1) (1876-78) I.L.R. 1 Mad. 24.

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was drawn between Advocates and Vakils (except in the matter of authorisation by their clients) as regards their right to appear, plead and act in the other High Courts subsequently established in British India without original jurisdiction. The position in these Courts was correctly stated by a Full Bench of the Allahabad High Court thus :—

"Not only by the Letters Patent but by the Civil Procedure Code, an Advocate may act for his client in this Court in the manner in that statute set forth and do all things that a Pleader, that is, a Vakil, may do, provided always that he be upon the Roll of the Court's Advocates": *Bakhtawar Singh* v. *Sant Lal*(1).

In this situation, the Legal Practitioners Act, 1879, (Act XVIII of 1879) which consolidated and amended the law relating to Legal Practitioners was passed. By section 4 it empowered the Advocates and Vakils enrolled in any High Court to "practise" in all subordinate courts and in any other High Court with the "permission" of the latter Court. No Vakil or Pleader, however, was to be entitled to "practise" in a High Court exercising jurisdiction in a Presidency Town. By section 5 all persons enrolled as Attorneys in any High Court became "entitled to practise" in all courts subordinate to such High Court and in any court in British India other than a High Court established by Royal Charter on the roll of which he is not entered. It is worthy of note that the right to practise thus conferred included the right to plead as well as to act in all the courts referred to above.

Then came the Indian Bar Councils Act, 1926, which was enacted in response to a demand by the legal profession for unification and autonomy of the Bar, and it achieved a certain measure of both, eliminating the two grades of practitioners, the Vakils and the Pleaders, by merging them in the class of Advocates who were "entitled as of right to practise" in the High Courts in which they were enrolled and in any other court in British India, subject to certain

(1) (1887) 9 All. 617, 621.

exceptions. It also provided for the constitution of Bar Councils for the High Courts with power to regulate the admission of Advocates, to prescribe their qualifications and to inquire into any case of misconduct that may be referred to them. But the right to practise and the power to make rules were not to limit or in any way affect the unlimited powers of the High Courts at Calcutta and Bombay to make rules allowing or disallowing Advocates to practise on their Original Side: (*vide* section 9 (4) and section 14). While such was the position of Advocates in the courts in what used to be known as British India, it is not a matter of dispute that Advocates practising in the courts of what were known as Indian States were allowed to appear, plead and act on behalf of suitors.

It will thus be seen that legal practitioners, by whatever name called, practising in all the High Courts in India, except on the Original Side of the Calcutta and Bombay High Courts, and in the innumerable subordinate courts all over India were always entitled to plead as well as to act. In the Original Side of the Calcutta and Bombay High Courts alone, where the cleavage between the Original and Appellate jurisdictions continued to be marked, due, as we have seen, to historical reasons, the functions of pleading and acting, which a legal practitioner normally combines in his own person, were bifurcated and assigned, following "the usage and the peculiar constitution of the English Bar" (*per* Lord Watson in the case cited below), to Advocates and Attorneys respectively.

In this situation, the establishment of the Supreme Court of India, exercising appellate jurisdiction over all the High Courts naturally stimulated the demand for the unification of the Bar in India, and Parliament enacted the new Act as a step towards that end. It is a brief enactment intituled "an Act to authorise Advocates of the Supreme Court to practise as of right in any High Court" and consists of only two

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sections. Section 1 describes the short title of the Act and section 2 enacts (so far as material here :—

"Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may, be permitted to practise in that High Court every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court:

Provided that nothing in this section shall be deemed to entitle any person, merely by reason of his being an Advocate of the Supreme Court, to practise in any High Court of which he was at any time a judge, if he had given an undertaking not to practice therein after ceasing to hold office as such judge."

According to the petitioner's contention, an Advocate of the Supreme Court becomes entitled as of right to appear and plead as well as to act in all the High Courts including the High Court in which he is already enrolled, without any differentiation being made for this purpose between the various jurisdictions exercised by those courts. The word "practise" as applied to an Advocate in India includes both the functions of acting and pleading, and there is nothing in section 2 to warrant the cutting down of that statutory right to pleading only on the Original Side of the Calcutta High Court as the respondents seek to do. On the other hand, the respondents contend that the *non obstante* clause in the first part of the section furnishes the key to the proper interpretation of its scope, and inasmuch as that clause supersedes only those provisions of the Bar Councils Act, and of any other law which exclude persons not entered in the roll of Advocates of a High Court from the right to practise in that Court, the enacting clause must be construed as conferring only a right co-extensive with the disability removed by the opening clause; that is to say, the section is designed only to enable Advocates of the Supreme Court who are not enrolled as

Advocates of any High Court to practise nevertheless in that High Court. The petitioner, who is already an Advocate of the Calcutta High Court, could derive no additional right from the section in relation to that Court, as he does not fall within the purview of the section. Alternatively, even if the provision is read as conferring on Advocates of the Supreme Court the right to practise in relation to all the High Courts in India, including the High Courts in which they are already enrolled, the section does no more than entitle them to practise in conformity with the conditions subject to which advocates are permitted to practise in those Courts, for the word "practise" is a term of indefinite import and, as applied to an Advocate, it may mean pleading or acting or both, according to the conditions under which the profession of an Advocate is exercised in the court concerned. Both branches of this contention have found favour with the learned Judges of the court below.

A third view was also suggested in the course of the debate before us. An Advocate of the Supreme Court is entitled under the Rules of that Court only to appear and plead and not to act, while Agents who are enrolled as such are entitled only to act but not to appear and plead. In dealing with the right of Advocates of the Supreme Court to "practise" in the High Courts, Parliament must therefore be taken to have used that word in the sense only of appearing and pleading, the object of section 2 being only to confer on the Supreme Court Advocates the right to appear and plead in all the High Courts and no further or other right.

Having given the matter our most careful and anxious consideration, we have come to the conclusion that the petitioner's contention is correct and must prevail.

As we have already seen, there are in this country more than 20 High Courts (including the Judicial Commissioners' Courts which are treated as High Courts for this purpose), and in all these

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High Courts excepting the original jurisdiction of the Calcutta and Bombay High Courts and in all the numerous subordinate courts, both civil and criminal, existing all over the country, an Advocate combines in himself both the functions of acting and pleading which constitute the normal activities of all legal practitioners except members of the English Bar whose "usage and peculiar constitution" allow them only to appear and plead and not to act. It would seem that this peculiar British system of division of functions between Barristers and Attorneys is not in vogue even in all the British Dominions and Colonies. For instance, in the report of the case *Queen* v. *Doutre*(1), we find counsel for the respondent stating in the course of his argument that "In all the Provinces of Canada the functions of Barristers and Solicitors are united in the same person and the rules of the English Bar do not apply there". In upholding in that case the right of counsel to sue for and recover on a *quantum meruit* in respect of professional services rendered by him, the Judicial Committee remarked :—

"Their Lordships entertain serious doubts whether in an English Colony where the common law of England is in force, they (*i.e.*, general considerations of public policy) could have any application to the case of a lawyer who is not a mere advocate or pleader and who combines in his own person various functions which are exercised by legal practitioners of every class in England all of whom, the Bar alone excepted, can recover their fees by an action at law."

It seems reasonable, therefore, to assume that the practice of law in this country generally involves the exercise of both the functions of acting and pleading on behalf of a litigant party; in other words, the Bar in India, generally speaking, is organised as a single agency. Accordingly, when the Legislature confers upon an Advocate "the right to practise" in a Court, it is legitimate to understand that expression as authorising him to appear and plead as well as to

(1) (1883) 9 App. Cas. 745.

act on behalf of suitors in that Court. It is true that the word "practice" used in relation to a given profession means simply the pursuit of that profession and involves the exercise of the functions which are ordinarily exercised by the members of the profession. But it seems to be fallacious to relate that expression, as applied to an Advocate, either, on the one hand, to the Court in which the Advocate is enrolled or, on the other, to the Court in which he seeks to exercise the statutory right conferred on him. It must, in our opinion, be related to the general constitution of the Bar in India as a single agency in dealing with the litigant public, a system which prevails all over this vast country except in two small pockets where a dual agency imported from England was maintained, owing, as we have seen, to historical reasons.

We are accordingly unable to accept the suggestion that because the Advocates of the Supreme Court are not, under the Rules of that Court, entitled to act, the word "practise" as used by Parliament in section 2 must be understood in the restricted sense of appearing and pleading only. Parliament was, of course, aware that the right of the Advocates of the Supreme Court to practise in that Court was confined only to appearing and pleading, but the object of section 2 was to confer upon a designated body of persons, namely, the Advocates of the Supreme Court, a right to practise in *other* courts, *viz.*, the various High Courts in India, whether or not they were already enrolled in such courts. This statutory right, which is conferred on the Supreme Court Advocates in relation to other courts and which they did not have before, cannot, as a matter of construction, be taken to be controlled by reference to what they are allowed or not allowed to do in the Supreme Court under the Rules of that Court. Such Rules are liable to be altered at any time in exercise of the rule-making power conferred by article 145 of the Constitution. The scope and

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content of the new statutory right conferred in relation to the High Courts could not have been intended to depend on the varying scope of the functions which the Supreme Court Advocates are allowed to exercise in that Court from time to time. Besides, the consequences of such a construction would be somewhat startling. For instance, if an Advocate of the Supreme Court not entered on the Roll of the Allahabad High Court desired to practise in the latter Court where there are no Attorneys or Agents, he would find himself in a difficult situation. It was said that a local Advocate could be engaged to instruct him, acting for the client. Even if it were permissible to substitute a local Advocate for an "Agent" to overcome the disability imposed by Order IV, Rule 11, of the Supreme Court Rules which prohibits an Advocate from appearing "unless he is instructed by an Agent", it would be tantamount to introducing a new type of dual agency where it does not exist at present, an innovation which, we think, could hardly have been contemplated. Such an interpretation would also render the right conferred by the new Act largely illusory in practice.

The construction adopted by the learned Judges of the High Court, which relates the word "practise" in section 2 to the High Court in which the Supreme Court Advocate seeks to exercise his right, seems to us to be equally open to objection. In their view, that word as applied to the same Advocate should be understood in a wider or narrower sense in relation to different High Courts, and indeed, to different jurisdictions of the same High Court, according to the rules there in force. They say:—

"Since the section applies to a number of different High Courts where different conditions of practice prevail, the word 'practice' has no one particular and invariable meaning in the section but its meaning must vary according as the section is applied to one High Court or another. In its application to each High Court it will have the meaning which an Advocate's right to practise bears in that Court at

the time under the local rules and regulations. This meaning may be wider in relation to one High Court and narrower in relation to another, and even in relation to the same High Court it may not always remain the same, for a High Court may enlarge the professional rights of its Advocates and if it does so, Advocates of the Supreme Court will, thereafter, have the enlarged rights in that Court. But at any given point of time the rights of an Advocate of the Supreme Court to practise in any particular High Court in exercise of the power conferred on him by section 2 can at most be co-extensive with but no greater than the right which Advocates of that Court themselves possess at the time."

We are unable to agree with this ambulatory interpretation of section 2. It may be that the full sense of the word "practise" as including both acting and pleading may be cut down by the context in which it is used in a particular statute. But we do not find any such context in the language of the new Act or in its object as we conceive it. The construction which the learned Judges have placed on section 2 was supported before us by attributing to the word "practise" the "dictionary meaning", as it was called, of exercising a profession and postulating the exercise by the Advocate of the Supreme Court of different professions in different High Courts in which he may seek to appear. Thus, he exercises the profession of a Madras Advocate while appearing in Madras; the profession of an Appellate Side Advocate or of an Original Side Advocate, as the case may be, while appearing on those sides of the Calcutta and the Bombay High Courts, and so on. The object of this curious differentiation is to read the different conditions under which an Advocate exercises his profession in each of those Courts or jurisdictions into the word "practise" itself as the necessary implication of its dictionary meaning so as to bring in the exclusion of acting on the Original Side as part of its connotation. We find it difficult to appreciate this view. The Advocate of the Supreme Court in all the cases

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referred to above seeks to practise only one profession, namely, the profession of an Advocate. As such he would be bound to observe the rules of practice of each Court, that is, the prescribed procedure for conducting legal proceedings in the Court concerned; but a rule which denies to him the right to exercise an essential part of his function by insisting on a dual agency on the Original Side is much more than a rule of practice and the power of making such a rule, unless expressly reserved by the new Act, as it was reserved in section 9 (4) and section 14(3) of the Bar Councils Act, would be repugnant to the right conferred by section 2. In this connection, it may be pertinent to point out that the power of the High Courts to make rules of practice regulating the procedure to be followed in the conduct of proceedings before them and the power to frame rules regulating the admission and conduct of legal practitioners were always derived from distinct sources—originally under different clauses of the Letters Patent establishing them and later from the Civil Procedure Code and the Bar Councils Act.

The learned Judges have also overlooked an important distinction between the position of an Advocate of the Calcutta or the Bombay High Court in relation to his Court and that of an Advocate of the Supreme Court in relation to those Courts. The former is not entitled to practise "as of right" on the Original Side of his High Court as his right to practise is made under section 14(1) (a) expressly subject to section 9(4) which reserves the power of those Courts to exclude him from such right so far as the Original Side is concerned. In other words, the local Advocate is not entitled "as of right" to practise on the Original Side of those two High Courts, whereas it is open to argument and indeed is now argued that the Advocate of the Supreme Court becomes under the new Act entitled to practise "as of right" in all High Courts without any distinction in the matter of the jurisdictions exercised by them, *because no such power is preserved and continued in the new Act.* In view of this

difference, which is vital to the petitioner's contention, it is not correct to say that the right conferred on the Supreme Court Advocate "can at most be co-extensive with but no greater than the right which Advocates of that Court themselves possess at the time". Here, indeed, we reach the crux of the whole case.

Now, section 14(1) (a) of the Bar Councils Act enacts :—

"14. (1) An Advocate shall be entitled as of right to practise—(a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an Advocate," and

Section 9(4) provides :—

"Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application, or to prescribe the conditions under which such persons shall be entitled to practise or plead."

Section 14(3) reads :—

"Nothing in this section shall be deemed to limit or in any way affect the power of the High Court of Judicature at Fort William in Bengal or of the High Court of Judicature at Bombay to make rules determining the persons who shall be entitled respectively to plead and to act in the High Court in the exercise of its original jurisdiction."

It is to be noted that by virtue of the last two provisions to which the right of local Advocates is made expressly subject, the High Courts of Calcutta and Bombay have the power to "grant or refuse as they think fit" the application of any person applying to practise in the Original Side of those Courts, and the power to make rules laying down who shall plead and

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who shall act on that side. It is in exercise of these powers that the High Courts have framed the rules, to which reference has been made, cutting down the right of the Advocates of those Courts to practise on the Original Side to appearing and pleading only and otherwise imposing restrictions on that right, such as, that they shall not appear unless instructed by an Attorney. That is to say, the Advocates of those Courts are *not* entitled to practise *as of right* on the Original Side. As the powers thus reserved are exercisable only in regard to the Original Side, the Advocates of these Courts are under section 14(1) (a) *entitled as of right* to practise in the appellate and other jurisdictions exercised by those Courts. Similarly, under section 2 of the new Act every Advocate of the Supreme Court is *entitled as of right* to practise in any High Court. But it is significant that no power is reserved to the Calcutta or the Bombay High Courts to cut down this statutory right and confine it to pleading alone on the Original Side. Why were the reservations which the Legislature took care to insert in the Bar Councils Act in conferring a statutory right of practice on Advocates of the High Courts omitted in the new Act in conferring a similar right in similar terms on the Advocates of the Supreme Court in relation to the High Courts? Why this departure from the pattern of what is, in this respect, a closely analogous piece of legislation? The respondents made two answers to this question neither of which seems to us satisfactory. One was that the word "practise" itself connoted, in relation to the Original Side of the Calcutta and Bombay High Courts, only pleading and not acting, as Advocates of those Courts practising on that side had long been only appearing and pleading instructed by Attorneys who acted for the suitors. This argument we have already rejected. But, even so, why insert section 9(4) in the Bar Councils Act and make the right under section 14(1) (a) subject to the overriding powers under section 9(4)? If the argument were valid, such provisions would have been wholly unnecessary, for,

even in their absence, the word "practise" would connote only pleading and not acting. This indeed is an additional ground for rejecting that construction. It is legitimate, therefore, to conclude that the Legislature used the word "practise" both in the Bar Councils Act and in the new Act in its full sense of acting and pleading, but while in the case of Advocates of the Calcutta and Bombay High Courts it has expressly preserved and continued the power of those courts to restrict or exclude the right of practice on the Original Side, it has reserved no such overriding power under the new Act with the result that any restrictive rule cutting down the statutory right would be repugnant to section 2 and therefore void and inoperative.

A similar view of the effect of section 14(1) (a) of the Bar Councils Act was expressed by a Full Bench of the Madras High Court in *Powers of Advocates, In re* (1), where it was held that a rule made by that Court excluding the Advocates enrolled there from acting on the Insolvency Side became invalid and inoperative after the enactment of that Act, and we entirely agree with that decision. The learned Judges below attempted to distinguish that case, as Mr. Chatterjee for the respondents did before us, by observing that because the Bar Councils Act made no distinction between the different jurisdictions of the Madras High Court and the rules of that Court allowed the Advocates to act and plead on the Original as well as on the Appellate jurisdiction thereof, the learned Judges construed the word "practise" in section 14 to mean both acting and pleading. That is not a correct view of the reasoning employed by the Full Bench. The learned Judges failed to see that such reasoning would indeed lead to the opposite conclusion. As a matter of fact, there was a rule under which the local Advocates were prevented from acting and they had accordingly not acted in the insolvency jurisdiction of that Court, so that if "practise" in section 14(1) (a) were to be construed

(1) (1928) I.L.R. 52 Mad. 92.

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in the light of what the Advocates had been doing in the past under the rules of that Court, the Court would have had to hold that the Advocates acquired no new right by virtue of section 14(1) (a). But the Full Bench held that they did and the gist of their reasoning was thus put by Kumaraswami Sastri J. who delivered the leading judgment:—

"The word 'practise' ordinarily means 'appear, act and plead', unless there is anything in the subject or context to limit its meaning.....I am of opinion that where an Act confers rights to a party in general terms and entitles him to perform more than one function, the cutting down of those rights by a rule would make that rule repugnant to the provisions of the Act."

It was next suggested that no support for the petitioner's contention could be derived from the absence in the new Act of reservations like those contained in sections 9 (4) and 14 (1) (a) of the Bar Councils Act because the power of framing rules regarding legal practitioners given to the Chartered High Courts under their respective Letters Patent could be exercised only in respect of the Advocates enrolled in those Courts, and the reservation of a power so limited would be meaningless in the new Act which deals with the rights of the Supreme Court Advocates. This argument overlooks that those High Courts had unfettered discretion to admit or to refuse admission to any person to practise as an Advocate, Vakil or Attorney. Clause 9 of the Letters Patent of the Calcutta High Court, for instance, empowers that Court "to approve, admit and enroll such..... Advocates, Vakils and Attorneys as to the said High Court shall seem meet". The Bar Councils Act also assumed that a power to exclude *any person* from practising on the Original Side existed in the High Courts, as is shown by section 9 (4) which provides that nothing contained in that Act shall be deemed to affect the power of the Calcutta and the Bombay High Courts to grant or refuse the application of "persons" applying to practise on the Original Side of

those Courts or their power to prescribe the conditions under which "such persons" could practise on that side. Be it noted that the word used is not "Advocates" which, in view of the definition in section 2 (1) (a), would indicate a power confined to the Advocates of those Courts. And when that Act proceeded to empower by section 14 (1) (a) an Advocate enrolled in a High Court to practise as of right in that Court, it took care to make it clear that the right so conferred was subject to the exercise of the power reserved under section 9 (4). But, as pointed out already, it is significant that Parliament, in conferring a similar right under the new Act on the Supreme Court Advocates, did not reserve any such overriding power. In the absence of such reservation, the statutory right of a Supreme Court Advocate to plead as well as to act in the High Courts of Calcutta and Bombay in the exercise of their original jurisdiction cannot be taken away or curtailed by those Courts, and any rules which they may have made in the past purporting to exclude any Advocate from acting on their Original Side or from appearing and pleading unless he is instructed by an Attorney cannot affect such right.

Turning now to the *non obstante* clause in section 2 of the new Act, which appears to have furnished the whole basis for the reasoning of the Court below—and the argument before us closely followed that reasoning—we find the learned Judges begin by inquiring what are the provisions which that clause seeks to supersede and then place upon the enacting clause such construction as would make the right conferred by it co-extensive with the disability imposed by the superseded provisions. "The meaning of the section will become clearer", they observe, "if we examine a little more closely what the section in fact supersedes or repeals.....The disability which the section removes and the right which it confers are co-extensive." This is not, in our judgment, a correct approach to the construction of section 2. It should

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first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the *non obstante* clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment. We will revert to this clause again presently.

Following their line of approach, the learned Judges reached two conclusions: first, that section 2 confers no new right on an Advocate of the Supreme Court in relation to the High Court in which he is already enrolled, but gives him the right to practise in the High Courts in the roll of which he was not entered as an Advocate. The petitioner was accordingly not within the purview of the section in relation to the Calcutta High Court of which he was already an Advocate; and secondly, that the only provisions superseded by the *non obstante* clause are section 8 (1) and section 14 (2) of the Bar Councils Act and Rule 38 of Ch. V of the Original Side Rules of the Calcutta High Court and a similar rule framed under section 15 (b) of the Bar Councils Act by the Calcutta Bar Council, which prescribe the conditions subject to which Advocates of other High Courts are permitted to practise on the Original and Appellate Sides of that Court and the corresponding rules then in force in the Bombay High Court. These provisions alone, it was said, fell within the description "regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court." All other provisions of the Bar Councils Act, including sections 9 (4) and 14 (3), as well as other rules of the Original Side of both Calcutta and Bombay High Courts have not been superseded or repealed by section 2 of the new Act but continue in force. We now proceed to examine whether these conclusions are well-founded.

Much ado was made on both sides about the comma occurring just before the word "or" in the

non obstante clause, the petitioner stressing its importance as showing that the adjectival clause "regulating the conditions etc." does not qualify the words "Indian Bar Councils Act" which are separated by the comma and that, therefore, the whole of that Act is superseded, while learned counsel for the respondents insisted that in construing a statute punctuation marks should be left out of consideration. Nothing much, we think, turns on the comma, as it seems grammatically more correct to take the adjectival clause as qualifying "law". Having regard to the words "anything contained" and the preposition "in" used after the disjunctive "or", the qualifying clause cannot reach back to the words "Bar Councils Act". But, whichever way we take it, it must be admitted that, in framing the *non obstante* clause, the draftsman had primarily in mind those provisions which stood in the way of an Advocate not enrolled in any particular High Court practising in that Court. It does not, however, necessarily follow that section 2 is concerned only with the right of Advocates of the Supreme Court to practise in the High Courts in which they are not enrolled. The true scope of the enacting clause must, as we have observed, be determined on a fair reading of the words used in their natural and ordinary meaning, and in the present case, there is not much room for doubt on the point. The words "every Advocate" and "whether or not he is an Advocate of that High Court" make it plain that the section was designed to apply to the Advocates of the Supreme Court not only in relation to the High Courts of which they are not Advocates but also in relation to those High Courts in which they have been already enrolled. The learned Judges below dismissed the words "whether or not etc." with the remark that "they are not very apposite", as "no one who is an Advocate of a particular High Court requires to be an Advocate of the Supreme Court in order to practise in that Court". While it may be true to say that section 2 does not give Advocates of many of the High Courts any additional right

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in relation to their own Courts, it would, according to the petitioner's contention, give at least to the Advocates of the Calcutta and Bombay High Courts some additional right in the Original Side of those Courts, and that may well have been the purpose of using those words. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

Nor can we read the *non obstante* clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of section 2 covers *all* Advocates of the Supreme Court, the *non obstante* clause can reasonably be read as overriding "anything contained" in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the *non obstante* clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. *Posteriores leges priores contrarias abrogant* (Broome's Legal Maxims, 10th Edn., p. 347). Here, section 2 entitles every Advocate of the Supreme Court as of right to practise in any High Court in India. The phrase "entitled as of right" has evidently been adopted from the Bar Councils Act, and we have already indicated our view that the word "practise" as applied to a legal practitioner in India includes, in the absence of any limiting or restrictive context, both the functions of acting and pleading. The phrase "entitled as of right to practise" is an emphatic affirmation of a right to plead and to act independently of the will or discretion of any other person. Could it be said that sections 9 (4) and 14 (3)

of the Bar Councils Act are consistent with the existence of such a right? As we have seen already, section 9 (4) preserves the powers of the High Courts at Calcutta and Bombay, among other things, "to grant or refuse, as they think fit" the applications of persons to practise in those High Courts in the exercise of their original jurisdiction. How could a person be said to be *entitled as of right to practise* in a High Court if that Court has unfettered power to reject his application to practise on an important side of its jurisdiction? Similarly, how could a person be said to be entitled as of right to plead in a High Court if that Court has the power to frame a rule which precludes him from pleading in the original jurisdiction of that Court unless he is instructed by an Attorney? Obviously, sections 9 (4) and 14 (3) of the Bar Councils Act and section 2 of the new Act entitling an Advocate of the Supreme Court *as of right* to practise in any High Court cannot stand together. Whether by force of the *non obstante* clause liberally construed as indicated above or of the well-established maxim of construction already referred to, the new Act must have the effect of abrogating the powers reserved and continued in the High Courts by the aforesaid provisions of the Bar Councils Act. We cannot, therefore, agree with the learned Judges below that the said two provisions have not been superseded or repealed by section 2. As we have already observed, if such reservations had also been inserted in the new Act, the analogy with section 14 (1) (a) of the Bar Councils Act would have been complete, and the petitioner as an Advocate of the Supreme Court could be prevented by rules made in appropriate terms from acting on the Original Side of the Calcutta and the Bombay High Courts. But, in the absence of such reservations in the new Act, his claim in these proceedings must succeed.

It has been said in the course of the argument that, notwithstanding the absence of such reservations in the new Act, it must be assumed that the Advocates of the Supreme Court have become entitled to practise

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in any High Court only subject to the rules and regulations of that Court or, as the High Court put it "section 2 does not confer an uncharted freedom on the Advocates of the Supreme Court to practise in any High Court in any way they like, but only puts them, in each different High Court, on a par with the Advocates of that Court, where they must submit to the same terms and conditions as bind those Advocates". Otherwise, it was said, the Supreme Court Advocates would be "let loose" to practise in all Courts freed of all obligations to observe the rule and regulations of those Courts and the result would be confusion and chaos. Therefore, it was urged, the rules of the Calcutta and Bombay High Courts, which preclude Advocates of those Courts from acting on the Original Side of their jurisdiction or from pleading without the intervention of an Attorney, are binding upon Supreme Court Advocates as well. We see no force in the argument which seems to proceed on a misconception. The right of an Advocate to practise, as we have seen, normally comprises the exercise of his two-fold function of acting and pleading without the intervention of anybody else. Any rule or condition that prevents him from exercising one of those functions is plainly a cutting down of his right to practise and, affecting as it does the substance of his right, is in its operation, quite unlike the rules and conditions of practice under which all Advocates normally carry on their business in courts. No one suggests that a Supreme Court Advocate is, by becoming entitled to practise in the High Courts, freed from all obligation to conform to the rules of practice and regulations as to costume and such other matters, according to which the profession of law must be exercised in the various High Courts. There is a vital distinction between such rules and regulations and the rules which seek to cut down the substance of an Advocate's right to act and to plead by excluding him from the exercise of the one or the other of those two functions. The Bar Councils Act recognises this distinction by expressly reserving the

power of the High Courts of Calcutta and Bombay to exclude or impose restrictions upon the right of Advocates to plead and to act on the Original Side, whereas no similar reservation has been considered necessary in respect of the power to make rules and regulations of the former type, because they were not regarded as derogating from the substance of the statutory right to practise. Suppose, for instance, the Calcutta High Court made a rule that no person other than those mentioned in Rule 2 (1), Chapter I of the Original Side Rules (*i.e.*, practising Barristers in England, N. Ireland, etc.) will be entitled to appear and plead on its Original Side, could it reasonably be suggested that such a rule was only a matter of "internal administration" and, as such, would bind all Advocates practising in that Court even apart from section 9 (4)? Any rules which prevent an Advocate from acting on the Original Side or appearing on that side without the intervention of an Attorney constitute a serious invasion of his statutory right to practise, and unless the power to make such rules is reserved in the statute which confers the right they cannot prevail against that right.

Reference was also made in this connection to the difficulty of exercising disciplinary control over the Supreme Court Advocates practising in the High Courts in which they are not enrolled but such difficulty, if any, may arise under both the interpretations contended for before us. It is not denied that a Supreme Court Advocate is entitled to appear and plead and act on the Appellate Side of all the High Courts and the question as to how disciplinary jurisdiction is to be exercised over him in relation to his activities on the Original Side will have to be determined on the same lines as in relation to his activities on the Appellate Side and the possibility of any such difficulty arising cannot be more of an objection to the one construction than to the other.

There was much argument before us as to the object which Parliament had in view in passing the new Act, each side suggesting an object which would

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support the construction which it sought to place upon section 2. Each side relied upon the "statement of objects and reasons" annexed to the Bill in support of its own contentions. Reference was also made to speeches made on the floor of the House by members during the debate on the Bill. Our attention was also called to the form of the Bill as originally introduced in the House and its amendment by omitting part (a) of the proviso to clause (2) thereof.

As regards the speeches made by the members of the House in the course of the debate, this Court has recently held that they are not admissible as extrinsic aids to the interpretation of statutory provisions: *The State of Travancore-Cochin & Another* v. *The Bombay Co. Ltd. etc.*(1).

As regards the propriety of the reference to the statement of objects and reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the statement of objects and reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

The omission of part (a) of the proviso to clause (2) of the Bill seems to us to stand on no higher footing. It sought to exclude from the purview of the Bill the right of an Advocate of the Supreme Court to plead or to act in any High Court in the exercise of its original jurisdiction. Its omission was strongly relied on by the petitioner as indicating the intention of

(1) [1952] S.C.R. 1112.

Parliament that the right of a Supreme Court Advocate to plead and to act should prevail also on the Original Side of a High Court. It was urged that acceptance or rejection of amendments to a Bill in the course of Parliamentary proceedings forms part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the legislature when the language used in the statute admitted of more than one construction. We are unable to assent to this proposition. The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy, as it happened to be in this case, and without the speeches bearing upon the motion, it cannot be ascertained with any reasonable degree of certainty. And where the legislature happens to be bicameral, the second Chamber may or may not have known of such reason when it dealt with the measure. We hold accordingly that all the three forms of extrinsic aid sought to be resorted to by the parties in this case must be excluded from consideration in ascertaining the true object and intention of the Legislature.

In the result, treating this proceeding as an appeal from the judgment of the High Court, we set aside the order of that Court and direct the respondents to receive any warrant of authority which the first petitioner may produce from the legal representative of the second petitioner who is reported to have died in the course of the proceeding. We make no order as to costs.

MUKHERJEA J.—This case has been argued before us with elaborate fulness by the petitioner No. 1, Mr. Aswini Kumar Ghosh, who appeared in person, as well as by a number of eminent counsel representing the Barristers' and Advocates' Associations in the three principal High Courts in India. Having given their learned arguments the best consideration that I am capable of, I have come to the conclusion that this application cannot succeed.

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The matter in controversy is a very short one. The petitioner No. 1 is an Advocate of the Calcutta High Court entitled to practise both on its Original and Appellate Sides. This means, that he can both plead and act on the Appellate Side of the Court and plead only on its Original Side. Mr. Ghosh later got himself enrolled as an Advocate of the Supreme Court and after the passing of the Supreme Court Advocates (Practice in High Courts) Act, 1951, he asserted his right, on the strength of the provision of that enactment, to "act" also on the Original Side of the Calcutta High Court. He actually filed "a warrant of power and appearance" on behalf of the petitioner No. 2 in a suit pending in the Original Side of that Court in which the latter figures as the defendant. The warrant was returned to him by the Suit Registrar, Original Side, with an endorsement on it, that it must be filed by an Attorney of the Court under the rules and orders of the Original Side of the High Court, and not by an Advocate. Being aggrieved by this refusal, the petitioners presented an application before the Calcutta High Court under article 226 of the Constitution, complaining of infraction of the right conferred upon the first petitioner by Act XVIII of 1951 and praying for an appropriate writ or order to enforce the same. A rule was granted on this application by Bose J. sitting singly; and eventually, having regard to the importance of the question involved in the application, the rule was heard by a Special Bench of three Judges, consisting of Trevor Harries C.J. and Chakravartti and Banerjee JJ. By the judgment, which was delivered by Mr. Justice Chakravartti on 21st December, 1951, the rule was discharged and the application of the petitioner was dismissed. The petitioners have now come up to this court on a substantive petition under article 32 of the Constitution and have also prayed for special leave to appeal against the judgment of the Calcutta High Court. We admitted the petition and issued notices to the Attorney-General of India as well as to the Barristers' and Advocates' Associations in those High Courts in India which are likely

to be affected by the decision in the case. A number of them, as said above, appeared before us through counsel and we had also the advantage of hearing the learned Attorney-General on the points that were raised in course of hearing.

The sole point for consideration in this case is, whether the petitioner No. 1, who is an Advocate of the Supreme Court, can, in addition to exercising his right of pleading on the Original Side of the Calcutta High Court which is not challenged by anybody, claim, by virtue of the provision of section 2 of Act XVIII of 1951, the right to "act" on the Original Side of that Court, although according to the rules framed under the Letters Patent an Advocate of the Calcutta High Court may not appear in the Original Side unless instructed by an Attorney: (vide Chapter I, Rule 37, of the Original Side Rules). To decide this question we will have to investigate the precise extent of the right that has been conferred upon the Supreme Court Advocates by section 2 of the Act mentioned above, and ascertain what exactly is the meaning of the word "practise" as used in that section.

The Act is a very short one and consists only of two sections. The first section gives the name and description of the Act which is intituled "The Supreme Court Advocates (Practice in High Courts) Act" and the object, as stated at the outset before the enacting clause commences, is to "authorise Advocates of the Supreme Court to practise as of right in any High Court". The entire provision of the Act is contained in section 2 which runs thus :—

"Notwithstanding anything contained in the Indian Bar Councils Act, 1926 (XXXVIII of 1926), or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court".

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Upon this, a proviso is engrafted to the following effect that "nothing in this section shall be deemed to entitle any person merely by reason of his being an Advocate of the Supreme Court to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold office as such Judge". Then follows a short explanation which simply lays down that the expression "High Court" in the section includes the Court of a Judicial Commissioner and the statute ends there.

It may be mentioned at the outset that the Supreme Court was established in the year 1950 and article 145(1) of the Constitution empowered the Court to make rules "for regulating generally the practice and procedure of the court" including (a) 'rules as to the persons practising before the Court'. The Supreme Court Advocates were not entitled to practise as of right in any of the High Courts in India. The rules made by the different High Courts impose considerable restrictions and disabilities upon the Advocates of other High Courts who wanted to appear and conduct cases before them. The power to grant or withhold permission to these outside Advocates lay for the most part in the exercise of an unfettered discretion by the Chief Justice of the Court, and that too in individual cases, and instances were not rare of such permission being refused to lawyers of acknowledged eminence belonging to other High Courts. After the establishment of the Supreme Court in India and with the prospect of a united Bar looming in the minds of the people, this was felt to be extremely unjust and anomalous. It was primarily to remedy this defect in the existing law, that this particular enactment was passed by the legislature and the legislative purpose, as is disclosed in the language of the enactment, is to allow the Supreme Court Advocates access to the other High Courts in India as of right, untrammelled by any restriction or condition that the High Courts themselves might lay down in respect to the outside

Advocates. So far there is little room for any controversy. The dispute centers round the point as to the extent of right that the legislature conferred upon the Supreme Court Advocates in achieving this legislative purpose. The question is, what meaning is to be attributed to the word "practise" as used in the section ?

Mr. Ghosh argues that the word "practise" in its ordinary and literal sense would mean the right to appear, plead and to act as well; and it is an established rule of construction that a literal interpretation should not be departed from unless there are adequate grounds for such departure. It is said next that the literal meaning of the word "practise" cannot be cut down or controlled in any way by the language of the opening clause in section 2 of the Act; and that clause which may be described as a *non-obstante* clause is not confined in its operation to removal of the disabling provisions affecting those whose names are not entered as Advocates on the roll of a particular High Court, but has the effect of excluding all the provisions of the Bar Councils Act for purposes of this enactment. It is further argued that the words "whether or not he is an Advocate of that High Court" occurring in section 2 unmistakably indicate that the legislature had not in mind the removal of disabilities attaching to outside Advocates merely, but that it intended to confer certain privileges on domestic Advocates as well who happened to be enrolled as Advocates of the Supreme Court. All these matters require to be examined carefully.

The word "practise" when used with reference to a profession means "to follow, pursue, work at, or exercise such profession". The profession of an Advocate may contemplate both acting and pleading; under certain circumstances it may mean pleading alone without acting, but it can never mean acting simply, for those who are entitled to act only and have no right to plead do not come within the description of Advocates at all. There are other classes of non-Advocate lawyers who like Solicitors and Agents can

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act only but cannot plead, and to the carrying on of their profession also the same expression "practise" is applied. What is to be remembered in this connection is that the profession of an Advocate can be carried on only in a court of law and within the framework of the rules and regulations that obtain in such court. The word "practise" when used with reference to an Advocate is an elastic expression, having no rigid or fixed connotation and the precise ambit of its contents can be ascertained only by reference to the rules of the particular forum in which the profession is exercised.

Thus in the Supreme Court Rules the expression "Advocate" has been defined to mean "a person entitled to appear and plead before the Supreme Court". He has no right of acting at all. In Order IV, Rule 31, of the Rules, this right of an Advocate to appear and plead has been spoken of as the right of "practising"; while in the rule that follows, the function of an Agent, who can only act and not plead, has also been spoken of as "practice" before the Court.

In the Bar Councils Act the right of practice as an Advocate has been defined in section 14 (1) which lays down that "an Advocate shall be entitled as of right to practise—(a) subject to the provisions of subsection (4) of section 9, in the High Court of which he is an Advocate". The word "practise" has apparently been used here in the general sense of both pleading and acting and these rights have been limited by and made subject to the rules which the High Courts of Calcutta and Bombay may make determining the persons who shall be entitled to plead and to act in these High Courts in the exercise of their original jurisdiction. Sections 9 (4) and 14 (3) of the Bar Councils Act expressly reserve to the Calcutta and the Bombay High Courts the power to make rules in this respect and under the rules framed by them an Advocate is not permitted to appear on the Original Side unless he is instructed by an Attorney.

The words "entitled to practise as of right" which occur in section 14 (1) mentioned above have also been used in other parts of the Bar Councils Act, to wit, in sections 4 (2), 5 (1) and 8 (1) of the Act; but the word "practise" in all these provisions does not mean pleading and acting in an unlimited sense. It connotes the same rights and the same limitations which are prescribed in section 14 of the Act. The same expression has been used in section 2 of the Supreme Court Advocates Act apparently in the same sense and with the same implications and it cannot be argued that it connotes an unrestricted right of pleading and acting because the reservations mentioned in section 14 (1) of the Bar Councils Act have not been repeated there.

Mr. Ghosh has in this connection drawn our attention to two reported cases, one of which is a pronouncement of the Patna High Court and the other of the Madras High Court.

In the Patna case(1) the question arose as to whether an Advocate or Vakil whose name appeared on the roll of any High Court could "act" on behalf of his client by presenting an application for review of a judgment in a case which was tried by a court subordinate to the High Court. The question was answered in the affirmative and reliance was placed upon section 4 of the Legal Practitioners Act which lays down that "an Advocate or Vakil enrolled on any High Court shall be entitled to practise in all courts subordinate to the court on the roll of which he is entered". This case, it is to be noted, deals with Advocates' right to practise in subordinate courts where no distinction at all exists between pleading and acting. Consequently, the word "practise" in this context does include both pleading and acting.

In the Madras case(2) the point for consideration was, whether an Advocate enrolled in the High Court of Madras under the Indian Bar Councils Act was entitled not only to appear and plead

(1) *Laurentius Ekka* v. *Dhuki*, [1925] I.L.R. 4 Pat. 766.
(2) In re *the Powers of the Advocates*, [1928] I.L.R. 52 Mad. 92.

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but also to "act" in the insolvency jurisdiction of the court, in spite of the provision in Rule 128 of the Insolvency Rules of the High Court, which gave such right only to the Attorneys. It was held that the Advocate had the right to "act" by reason of the provision contained in section 14 (1) of the Bar Councils Act which entitled an Advocate to practise as of right in the High Court in which he is an Advocate; and because so far as the Madras High Court was concerned the Bar Councils Act made no distinction between different jurisdictions of the court and did not save the powers of the court to frame rules in respect of the original and insolvency jurisdictions. In these circumstances, a rule which cut down the right conferred by sections 8 and 14 of the Bar Councils Act would be deemed to be repealed under section 19 (2) of the Act as being repugnant to its provisions. It was expressly stated in the judgment that the position was different in regard to the Bombay and Calcutta High Courts and so far as these courts were concerned, their powers were expressly saved by the Bar Councils Act. This decision clearly shows that the expression "practise" would not include "acting" if with regard to particular jurisdictions of a High Court there are valid rules to the contrary.

The question for our consideration really is, what exactly is the position of a Supreme Court Advocate who wants to avail himself of the right of practising in any High Court in India in terms of section 2 of the Supreme Court Advocates Act? Is he to exercise the right only as a Supreme Court Advocate and in accordance with the rules which the Supreme Court itself has laid down in this respect, or is his position, when he appears before a High Court, the same as that of an Advocate enrolled in the said court and he has the same rights and disabilities which attach to such persons under its rules? The only other alternative that is or can be suggested and has been put forward on behalf of the petitioner is that he is not fettered by any rules either of the Supreme Court or of the particular High Court in which he appears;

and as the extent of his right depends upon the language of the section itself, the legislature by using the word "practise" has conferred upon him the right of both pleading and acting in any High Court he chooses, irrespective of the rules of practice which obtain in such court.

The first view does not appear to me to be tenable. If it is held, that what the section contemplates is that a Supreme Court Advocate in exercising his right of practice in any High Court should be governed by the Supreme Court Rules, the Act itself would be altogether unworkable. It is laid down in Order IV, Rule 12, of the Supreme Court Rules that "no person shall appear as Advocate in any case unless he is instructed by an Agent. By "Agent" is meant an Agent of the Supreme Court and under no provision of law is such Agent entitled to act in any High Court in India. The result, therefore, is that if the Supreme Court Rules are applied, no Advocate would be entitled to appear in any High Court at all.

It cannot be argued that even though the rules of the Supreme Court may not be strictly applicable, the intention of the legislature is that a Supreme Court Advocate in appearing before a High Court either on the Original or on the Appellate Side shall have only the right of pleading and he has to be instructed by an Attorney or a local Advocate who is competent to act. Whatever the merits of this view might otherwise be, the language of the section does not at all warrant such a construction and it cannot seriously be suggested that the word "practise", must in all cases be confined to pleading only. The result of such a construction would be to extend the dual system which is at present confined to the Original Sides of the Calcutta and the Bombay High Courts to all the High Courts in India, in all their jurisdictions and to the subordinate courts as well—a possibility which the legislature could never have contemplated.

To me it seems that when section 2 speaks of a Supreme Court Advocate being entitled as of right to practise in any High Court, what it actually means is

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that he would be clothed by reason of this statutory provision with all the rights which are enjoyed by an Advocate of that Court and his right to plead or to act would depend upon the provisions of the Bar Councils Act and the rules validly framed by the said Court, subject to this that no rule or provision of law would be binding, which would affect in any way his statutory right to practise in that Court solely by reason of his being enrolled as an Advocate of the Supreme Court.

It is suggested that if this was the intention of the legislature, nothing could have been easier for it than to state explicitly that a Supreme Court Advocate would have the right to practise in any High Court in the same way as an Advocate of that Court. In my opinion, that is the implication of the general word "practise" that has been used. As said already, the practice of an Advocate must always have reference to a court and it must imply the carrying on of the profession according to the rules which are binding on that court, except to the extent that the rules themselves are invalidated expressly or by necessary implication. If the legislature had expressly stated that an Advocate qualified under section 2 of the Act would have the right of both pleading and acting in any High Court in India or if that was the clear intendment and implication of the language used, any rule conflicting with that provision could certainly have been held to be invalid; but I am unable to say that the use of the word "practise" which has only a general import, by itself, would have that effect.

Looked at from this standpoint, the third view indicated above, which has been pressed vehemently on behalf of the petitioner, cannot certainly be supported. So long as the rules relating to pleading and acting in particular jurisdictions of specified High Courts are allowed to remain valid and binding, no intention can be imputed to the legislature, without clear words to that effect, of abrogating these rules with regard to the few persons who happen to be enrolled as Advocates of the Supreme Court. Far

from achieving uniformity in any sense of the word, such step would lead to serious anomaly and practical difficulties of an enormous character. In the original jurisdictions of the Calcutta and the Bombay High Courts, where the dual system subsists, there are elaborate rules regarding the functions of the Solicitors who alone are competent to act on that side, both in relation to the courts and to the litigants. The whole procedure is of a different type, dissimilar in many respects to that which is laid down in the Civil Procedure Code. It would be difficult, if not impossible, for an Advocate of the Supreme Court, who chooses to act on the Original Side of the Calcutta or the Bombay High Court, to fit himself within the framework of these rules. He cannot possibly carry on unless a fresh set of rules is prepared and the framing of new rules, which must exist side by side with the old rules, would lead to further complications and diversities. The position would certainly have been understandable if it could be held that the legislature wanted to do away with the dual system altogether and introduce one set of rules which would apply uniformly to all classes of lawyers. Speaking for myself, I would consider that to be an extremely desirable change; but I look in vain for expression of any such legislative intent either in the enactment itself or even in its historical background. The object of the legislation is quite simple. It is only to allow Advocates of the Supreme Court the right to practise in all the High Courts in India irrespective of the rules framed by them imposing restrictions on the right of Advocates whose names do not appear on their rolls. From the mere use of the word "practise", the connotation of which is not at all definite, I am unable to hold that it was the intention of the legislature to introduce such sweeping changes in the existing rules which the acceptance of this view would imply.

This leads me to an examination of the other parts of section 2 of the Act to discover, what light, if any, they throw upon the present question.

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It is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. Mr. Justice Chakravartti of the Calcutta High Court laid very great stress on the opening clause of section 2 of the Act which excludes the operation of certain statutory provisions, and this negative part of the section constitutes, according to the learned Judge, the measure and criterion of the right which the positive part formulates. The first question is, to what extent the provisions of any existing law have been eliminated by the opening clause of section 2. The language of the clause is as follows:—

"Notwithstanding anything contained in the Bar Councils Act (XXXVIII of 1926), or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court,....."

Mr. Justice Chakravartti is of opinion that this clause purports to remove all those provisions of the Bar Councils Act or of any other law which imposed restrictions upon persons not enrolled as Advocates of a particular court in the matter of practising in that court. The exclusion is to this extent and no further; and consequently all the other provisions contained in the Bar Councils Act or other statutes which lay down the conditions under which an Advocate enrolled in a High Court is entitled to practise in the Original Side of that Court, stand unaffected by that clause. If these provisions remain valid and effective, it is quite reasonable to hold that the word "practise" in the section must mean "practise" in accordance with these rules and not in supersession of them.

The contention of Mr. Ghosh is that on a proper construction of the language of the clause, the whole of the Bar Councils Act and not merely those provisions in it, which relate to disabilities attaching to

Advocates of other High Courts, must be deemed to be eliminated, so that the right of practising that is conferred by the section is to be exercised without the restrictions or limitations flowing from any of the provisions of the Bar Councils Act. In support of his contention that the whole of the Bar Councils Act is excluded by the opening clause, Mr. Ghosh lays great stress on a comma, which separates the Bar Councils Act and the figures and words that follow, from the expression "or in any other law" which comes immediately after that. He says further that under the ordinary rules of interpretation the adjectival phrase "regarding the conditions etc." should be taken to apply to the word or phrase immediately preceding it and not to the remoter antecedent term or expression. These arguments, though they have an air of plausibility about them, do not impress me much. Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. Cockburn C.J. said in *Stephenson* v. *Taylor* (1): "On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies". It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of *contemporanea expositio*(2). When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation(3). I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text(4).

Similarly, although a relative or a qualifying phrase is normally taken with the immediately preceding term or expression, yet this rule has got to be discarded if it is against common sense and natural

(1) (1861) 1 B. & S. page 101.
(2) See Craies on Statute Law, page 185.
(3) Vide Crawford on Statutory Construction, page 343.
(4) Ibid.

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meaning of the words and the expressions used. I find considerable force in the opinion expressed by Chakravartti J. that in the present case the effect of the position of the comma or the particular array of words in the sentence has been completely neutralised by the use of the word "other" occurring in the phrase "or in any other law". The result is, as the learned Judge has said, that the Bar Councils Act has been posited as an alternative to other laws and both have been subjected to the qualification contained in the qualifying clause.

Assuming, however, for argument's sake that Mr. Ghosh is right and that the whole of the Bar Councils Act is eliminated by the opening clause of the section, I do not think that even then it really improves his position. The Bar Councils Act itself does not make any provision relating to the rights of pleading and acting in the Original Side of any High Court. Sections 9(4) and 14(3) of the Act save only the rights of the High Courts of Calcutta and Bombay to make rules in relation thereto; and these rules are made by these courts in the exercise of their powers under the Letters Patent. Section 19(2) of the Bar Councils Act lays down as follows:—

"When sections 8 to 16 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, and such Letters Patent shall, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed."

If the entire Bar Councils Act is excluded for purposes of section 2 of Act XVIII of 1951, the rules framed by the High Courts of Calcutta and Bombay under the Letters Patent would remain valid and effective of their own force even without the saving provision contained in the above-mentioned section of the Bar Councils Act, and section 19(2) of the Act being out of the picture, the Letters Patent would

also remain fully alive. The result will be that Rule 37, Chapter I, of the Original Side Rules of the Calcutta High Court or Rule 40(2) of Chapter II of the Bombay High Court Rules, under which no Advocate can appear in the Original Side of these courts unless instructed by an Attorney, would not come within the purview of the opening clause of section 2, as they do not relate to matters regulating the conditions of outside Advocates. Rule 6, Chapter I, of the Bombay High Court Rules, to which our attention was drawn by the learned Attorney-General, lays down that an Advocate of any other High Court may appear in a particular case, with the permission of the Chief Justice, on the Original Side of the Court, provided he is instructed by an Attorney, and an Advocate of the Bombay High Court appears along with him. In my opinion, the whole of this provision must be deemed to be invalid for purposes of section 2 of Act XVIII of 1951, and a Supreme Court Advocate, who wants to appear and plead in a case in the Original Side of the Bombay High Court, has neither to take the permission of the Chief Justice nor is it necessary that he should have along with him an Advocate of that court. He should certainly be instructed by an Attorney, but that is because of the other provisions, which I have already mentioned, and which apply to the Advocates of the Bombay High Court itself.

I would be quite prepared to hold that what has been excluded by the opening clause of section 2 of the Act may not be the exact measure of the new right that the section purports to create. In my opinion, the section on its negative side eliminates so far as the Supreme Court Advocates are concerned, all disabling provisions existing under any law in regard to persons who are not enrolled as Advocates of any particular High Court. On the positive side, the section confers on Supreme Court Advocates the statutory privilege of practising as of right, in any High Court in India, no matter whether he is enrolled as an Advocate of that court or not.

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It is this positive aspect that has been emphasised by the words "whether or not he is an Advocate of that court" which occur at the conclusion of the section. It may not be strictly correct to say that these words are altogether inappropriate, for the section aims at conferring, though indirectly, certain privileges on those who are enrolled as Advocates of the particular High Court as well. Section 9 (4) of the Bar Councils Act lays down :—

"Nothing in this section or in any other provision of this Act shall be deemed to limit or in any way affect the powers of the High Courts of Judicature at Fort William in Bengal and at Bombay to prescribe the qualifications to be possessed by persons applying to practise in those High Courts respectively in the exercise of their original jurisdiction or the powers of those High Courts to grant or refuse, as they think fit, any such application (or to prescribe the conditions under which such persons shall be entitled to practise or plead)."

Provisions of this type are to be found in the Rules of both the Bombay and the Calcutta High Courts. Under Rule 1, Chapter I, of the Calcutta Original Side Rules, even an Advocate of that court has to make an application for being entitled to appear and plead on the Original Side and he can exercise that right only after that permission is granted. Such rules would have no effect after the passing of Act XVIII of 1951 and an Advocate of the Supreme Court will be entitled to plead in the Original Side of the Calcutta High Court as a matter of right and without complying with any of the formalities that may be prescribed by the rules of that court. Mr. Justice Chakravartti expressed doubt as to whether an Advocate of the Supreme Court, who presumably is not an Advocate of the Calcutta High Court, can, as such, plead in the Original Side of the Calcutta High Court. In my opinion, there is no room for doubt on this point at all. He is entitled to appear and plead as a matter of right under the express provision of section 2 of the Act,

Mr. Ghose finally attempts to support his contention that the intention of the legislature was to confer upon the Supreme Court Advocates the right to plead as well as to act in all High Courts in India by calling in aid three other facts. It is said first of all that in the statement of objects and reasons which accompanied the original bill, the right to practise was expressly stated to include both pleading and acting. In the second place it is pointed out that proviso (a) to section 2 which occurred in the original bill and which excluded the right of both pleading and acting in the Original Side of the High Courts from the operation of section 2 was dropped altogether and the Act was passed without that proviso. Lastly it is urged that the expression "practise", which has been employed in the existing proviso to the section, obviously means both pleading and acting, and it is against sound rules of construction to attach different meanings to the same word used in two parts of the same section.

There are weighty pronouncements of English courts as well as of the Judicial Committee of the Privy Council which lay down that in construing a statute all negotiation previous to the Act or the original form of the bill must be dismissed from consideration. "We cannot interpret the Act" said Lord Halsbury, "by any reference to the bill, nor can we determine its construction by any reference to its original form"(1). It is not permissible to ascertain the meaning of the word used in an Act by reference to the proceedings in the Legislative Council, and the language of a "Minister of the Crown" in proposing a measure in Parliament which eventually becomes law is inadmissible(2). In a Calcutta case the learned Judges refused to look into the statement of objects and reasons accompanying an enactment as an aid to its construction(3). The

(1) Vide *Herron* v. *Rathmines* [1892] A.C. 492 at 502.

(2) Vide *Krishna Ayyangar* v. *Nellaperumal*, [1920] 47 I.A. 33; *Assam Railway & Trading Co. Ltd.* v. *Inland Revenue Commissioners*, [1935] A.C. 445; *Administrator General of Bengal* v. *Premlal*, [1895] 22 I.A. 107.

(3) Vide *Debendra* v. *Jogendra*, A.I.R. 1936 Cal. 593.

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judicial opinion on this point is certainly not quite uniform and there are American decisions to the effect that the general history of a statute and the various steps leading up to an enactment including amendments or modifications of the original bill and reports of Legislative Committees can be looked at for ascertaining the intention of the legislature where it is in doubt; but they hold definitely that the legislative history is inadmissible when there is no obscurity in the meaning of the statute(1). Even assuming that the latter view is correct, it does not appear to me that the first and the second contentions of the petitioner indicated above are really of any assistance to him. It is true that in the statement of objects and reasons which was circulated along with the original bill, the word "practise" was said to include both pleading and acting; but at the same time the original bill did not purport to confer at all upon the Supreme Court Advocates the right either of pleading or of acting in any High Court in the exercise of its original jurisdiction. This was expressly laid down in the original proviso (a) to section 2 and the concluding portion of the statement of objects and reasons stood thus:

"The present bill is intended to achieve such unanimity by providing that every Advocate of the Supreme Court shall be entitled to practise as of right in any High Court otherwise than on its Original Side."

Conceding that Mr. Ghosh is entitled to rely on the fact that the first proviso, which excluded the original jurisdiction of the High Courts from the purview of section 2 was subsequently dropped the dropping of the proviso by itself proves nothing. What the proviso intended was to confine the right of practising which section 2 of the Act conferred on Supreme Court Advocates exclusively to the appellate jurisdiction of the High Courts. A Supreme Court Advocate as such was not entitled under the proviso to act or plead in the Original Side of any

(1) Vide Crawford on Statutory Construction, page 383.

High Court in India. It is to be noted that this prohibition had nothing to do with the dual system that exists in the original jurisdiction of the Calcutta and the Bombay High Courts and it was totally unconnected with the provisions of the Bar Councils Act or the rules of the Calcutta and the Bombay High Courts in relation thereto. On the other hand, if, as I have already stated, section 2 of the Act purported to confer on the Supreme Court Advocates the right of practice in the different High Courts in India in the same way as the Advocates enrolled in those courts are entitled to do, the original proviso (a) purported to cut down that right to a considerable extent. Under this proviso the Supreme Court Advocates were denied the right of pleading on the Original Side of the Calcutta and the Bombay High Courts and they could neither act nor plead on the Original Side of the Madras High Court, although they would have those rights under the Bar Councils Act. The dropping of the proviso might mean nothing else than this that this restriction was withdrawn and the rights created by the section without the proviso stood intact.

Be that as it may, it is, in my opinion, a most risky thing to attempt to construe the meaning of a word in a statute with the aid of a non-existent provision. We do not know the reasons why the legislature deleted this clause and it is not permissible for us to speculate on these matters. A reference to the legislative debates or the speeches that were actually delivered in the floor of the House is, in my opinion, inadmissible to ascertain the meaning of the words used in the enactment.

The use of the word "practise" in the proviso to section 2, as it now stands, is also a matter of no importance. Section 2 confers certain additional rights upon the Supreme Court Advocates and they have the right of practising in all the High Courts in India subject, as I have said, to the rules and regulations binding on the Advocates in each one of them. The proviso makes an exception to this rule and in case

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an Advocate of any particular High Court, who became a Judge of that court, gave an undertaking at the time when he assumed his office that he would not practise in that court after he ceased to be a Judge, the provision in the section could not be availed of by him in the face of his undertaking. This is the plain meaning of the proviso. Apparently the legislature was not in the least concerned when it enacted this proviso with the extent of right which such Advocate possessed when he became a Judge; and the extent of the right would certainly depend upon the rules and regulations of the High Court in which he carried on his practice.

My conclusion is that the view taken by the Calcutta High Court is the right and proper view to take and this application must fail. I make no order as to costs.

DAS J.—The present proceedings before us have been initiated on a petition by two petitioners. The first petitioner is Sri Aswini Kumar Ghosh who is an advocate of the Calcutta High Court enrolled on the Original Side as well as on the Appellate Side of that Court. As such advocate of the Calcutta High Court, he is entitled to act and plead on the Appellate Side, but only to plead on the Original Side. He has since been enrolled also in this Court as an advocate which term is defined in Order I, rule 2, of the Rules of this Court as meaning a person entitled to appear and plead before the Supreme Court. On May 26, 1951, petitioner Aswini Kumar Ghosh served notices on the Registrars of the Original Side as well as of the Appellate Side of the Calcutta High Court intimating that, in exercise of the right conferred by the Supreme Court Advocates (Practice in the High Courts) Act, 1951, he would thenceforth "practise, *i.e.*, act and plead", in the said High Court at Calcutta also as a Supreme Court advocate. On July 14, 1951, petitioner Aswini Kumar Ghosh, as a Supreme Court advocate, tendered what he calls a warrant of appearance under rule 58 of the Indian Companies Rules framed by the Calcutta High Court in the matter of

a winding up petition regarding a company. That "warrant of appearance" was returned by the Registrar evidently because rule 58 requires a person who intends to appear on the hearing of the winding up petition to leave with or sent to the petitioner or to his attorney a notice of such intention signed "by him or by his attorney" and does not authorise the filing of a notice signed by an advocate. The second petitioner is one Sri Jnanendra Nath Chatterjee who is the defendant in Suit No. 2270 of 1951 pending on the Original Side of the Calcutta High Court. On July 18, 1951, petitioner Jnanendra Nath Chatterjee as defendant in the said Suit No. 2770 of 1951 executed a "warrant of appearance and power" in the said suit in favour of the petitioner Aswini Kumar Ghosh. The petitioner Aswini Kumar Ghosh as advocate for the petitioner Jnanendra Nath Chatterjee filed the warrant with the Assistant in charge of the Suit Registry Department of the Original Side. This was clearly done in purported compliance with the provisions of Chapter 8, rule 15, of the Original Side Rules. That rule, however, requires the defendant to enter his appearance to a writ of summons by filing a memorandum in writing containing the name and place of business of the defendant's attorney or stating that the defendant defends in person and containing his name and place of business. That rule does not in terms contemplate an advocate acting for a defendant. It is, therefore, not surprising at all that on July 27, 1951, the "warrant of appearance" was returned by the respondent Arabinda Bose, the Assistant in the Suit Registry Department of the Original Side of the Calcutta High Court, with the endorsement that "the warrant must be filed by an attorney of this Court under High Court Rules and Orders, Original Side, and not by an Advocate". The petitioner Jnanendra Nath Chatterjee thereupon entered appearance in person on July 30, 1951, and has been defending the suit in person.

The two petitioners, however, moved the Calcutta High Court under article 226 of the Constitution

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and obtained a Rule calling upon the two respondents Sri Arabinda Bose, the Departmental Assistant, and Sri S. N. Banerjee, the Registrar of the Original Side, to show cause why an order or direction in the nature of an appropriate writ should not be issued for the enforcement of the fundamental right of the petitioner Aswini Kumar Ghosh "to practise, *i.e.*, to act and plead on the Original Side of this Court", as conferred on him by Act XVIII of 1951 and guaranteed by article 19 (1) (g) of the Constitution of India and why consequential orders therein mentioned should not be made. The Rule was heard by a Special Bench of the Calcutta High Court consisting of Harries C.J. and Chakravartti and Banerjee JJ. who discharged the Rule on December 21, 1951, and dismissed the petition. As will appear from the judgment of the High Court, the argument addressed to it "made no reference to the alleged fundamental right and that the petitioner confined his argument to the provisions of the Supreme Court Advocates (Practice in the High Courts) Act, 1951." The powers of the High Court under article 226 not being confined to the enforcement of fundamental rights, it was possible for the petitioner to rely on the rights under the last mentioned Act.

The petitioners did not apply for or obtain the leave of the High Court to appeal to this Court. Long after the time fixed by the rules for applying for special leave to appeal to this Court had expired the petitioners filed the present petition against the same respondents. The petition is intituled as an application under articles 22 (1), 32 (1) and (2), 135 and 136 (1) of the Constitution of India. In the prayer portion of the petition, the petitioners ask for directions, orders or appropriate writs on the respondents for the enforcement of their fundamental rights guaranteed under articles 19 (1) (g) and 22 (1) of the Constitution, an order declaring the right of the petitioner Aswini Kumar Ghosh to act on behalf of his clients on the Original Side of all High Courts in India including Calcutta, an order upholding the

right of the petitioner Jnanendra Nath Chatterjee to be defended in the said suit by the petitioner Aswini Kumar Ghosh and other consequential reliefs. There is an alternative prayer asking this Court to treat the petition as an application, under article 136, for special leave to appeal against the judgment and order of the Special Bench of the Calcutta High Court dismissing the petitioners' application under article 226 of the Constitution and for condonation of the delay in presenting the present petition.

At the hearing before us it has not been seriously suggested that the rights of the petitioner Jnanendra Nath Chatterjee, fundamental or otherwise, have in any way been infringed. Nor was the petition presented before us as one for the enforcement of any fundamental right of the petitioner Aswini Kumar Ghosh guaranteed by article 19 of the Constitution. What was pressed before us by the petitioner Aswini Kumar Ghosh, who appeared in person, was the right said to have been conferred on him as an advocate of this Court by section 2 of the Supreme Court Advocates (Practice in the High Courts) Act (Act XVII of 1951) hereinafter in this judgment referred to as "the Act". In the circumstances the petition has not seriously been presented before us as one under article 32 of the Constitution and it is not necessary for me to express any opinion as to whether a petitioner whose application for enforcement of an alleged fundamental right under article 226 has been rejected by the High Court can maintain an application under article 32 to this Court for the same relief based on precisely the same facts and grounds. The petition, however, has been presented before us as an application under article 136 of the Constitution for special leave to appeal from the judgment of the Special Bench of the Calcutta High Court. We have been pressed to proceed with the matter on the footing as if special leave to appeal has been given and the delay in the presentation thereof has been condoned by this Court. I deprecate this suggestion, for I do not desire to encourage the belief that an intending

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appellant who has not applied for or obtained the leave of the High Court and who does not say a word by way of explanation in the petition as to why he did not apply to the High Court and as to why there has been such delay in applying to this Court should nevertheless get special leave from this Court for the mere asking. As, however, the matter has been proceeded with as an appeal, I express my views on the questions that have been canvassed before us.

There is no dispute that the Act has conferred some new rights on the Supreme Court Advocates. The controversy is as to the ambit and scope of the right so conferred and it has centred round the expression "to practise" used in section 2 of the Act. In order to resolve that controversy we have to ascertain the true meaning of that expression as used in the Act.

The provisions of the Act quite clearly apply to and affect all High Courts in India. It is, therefore, necessary to bear in mind the status and position of advocates as they prevail in the different High Courts. The Indian High Courts Act, 1861 (24 & 25 Vic. C. 104) by section 1 authorised Her Majesty, by Letters Patent, to erect and establish High Courts for the three Presidencies of Bengal, Madras and Bombay. Section 9 of that statute provided that each of the High Courts to be so established should have and exercise civil, criminal and other jurisdiction, original and appellate, as therein mentioned 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." Section 16 of that statute also empowered Her Majesty to establish a High Court in and for any portion of the territories within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court. Pursuant to this authority High Courts were established by Letters Patent at Fort William in Bengal, Madras and Bombay. Clause 9 of the Letters Patent of each of the three Presidency High

Courts authorised and empowered each of the said High Courts:

"to approve, admit, and enrol such and so many Advocates, Vakils, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorised to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions."

Subsequently other High Courts were established from time to time by Letters Patent at different places, *e.g.*, Allahabad, Patna, Lahore and Nagpur, and similar power was, by clause 7 of the respective Letters Patent, conferred on each of the said High Courts to make similar rules. It is well known that each of the High Courts actually framed rules for the admission of advocates, vakils and attorneys. The High Courts of Calcutta, Madras and Bombay divided their jurisdictions into two broad categories, namely, original jurisdiction and appellate jurisdiction, and by their Rules made an internal classification of the advocates, vakils and attorneys. Thus the advocates or vakils enrolled on the Appellate Side were empowered "to appear, act and plead" but the advocates enrolled on the Original Side were permitted only "to appear and plead", the "acting" on the Original Side being reserved for the attorneys for whom a separate roll was maintained. The Madras High Court has, however, done away with this internal classification and advocates of that High Court may now appear, act and plead on the Original Side as well as on the Appellate Side. The Calcutta and Bombay High Courts, however, maintained the distinction. Chapter I, rule 37, of the Rules of the Original Side of the Calcutta High Court provides that persons to whom the rules contained in that chapter are applicable may not appear unless instructed by an attorney. Chapter I, rule 40, of the Rules of the Original Side of the

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Bombay High Court is on the same lines. Although the remaining Letters Patent High Courts in India have extraordinary original jurisdiction, both civil and criminal, they did not make any distinction between original and appellate jurisdiction as in Calcutta and Bombay and the advocates enrolled in those High Courts were and are permitted "to appear, act and plead" in all their jurisdictions. Apart from the several Letters Patent High Courts other High Courts, *e.g.*, the High Courts of Assam and Orissa and the High Courts of Part B States, also have framed rules of their own for admission of advocates and according to those rules the advocates of all these High Courts can "appear, act and plead". The position, therefore, was that, at the date of the Act, all advocates of all High Courts including those of the Appellate Side of Calcutta and Bombay High Courts but excluding only the Original Side advocates of Calcutta and Bombay could "appear, act and plead" in their own High Courts in all jurisdictions but the advocates of the Original Side of those two High Courts could only "appear and plead" on the Original Side.

Apart from the bar against acting imposed by the High Courts of Calcutta and Bombay on their own Original Side advocates, all the High Courts, by their respective rules, prescribed certain conditions subject to which alone an advocate who was not on their rolls could "appear and plead" in such High Courts. Chapter I, rule 38, of the Original Side of the Calcutta High Court provides as follows:—

"An Advocate of any other High Court or Chief Court may with the permission of the Chief Justice appear and plead for parties in matters arising in or out of the original jurisdiction, or in or out of appeals therefrom, provided he is a member of the Bar of England or of Northern Ireland, or a member of the Faculty of Advocates in Scotland, or a person entitled to appear and plead on the Original Side of the High Court of Judicature at Bombay, and that he is properly instructed by an Attorney."

There is also a rule framed under section 15 (b) of the Indian Bar Councils Act which applies to the Appellate Side of the Calcutta High Court prescribing that an advocate of another High Court can "appear and plead" on the Appellate Side of the Calcutta High Court in a particular case or cases only with the previous permission of the Chief Justice. Reference may in this connection be made to Chapter I, rule 6, of the Bombay Rules applicable to the Original Side and the rule framed under the Indian Bar Councils Act which applies to the Appellate Side of Bombay High Court and is set out in Schedule II of Part II of the Appellate Side Rules. There is no dispute that each of the other High Courts have rules in *pari materia* imposing conditions on advocates not on its roll in the matter of their appearing and pleading in such High Court. Thus it is clear that an advocate not on the rolls of a particular High Court could not as of right "appear and plead" in that High Court. He had to satisfy the conditions laid down by that High Court before he could "appear and plead" in that High Court. It should be particularly noticed that under these rules foreign advocates who satisfied the conditions were permitted only to "appear and plead". There never was any question or claim of a foreign advocate being permitted to "act" in a High Court of which he was not an advocate.

The legislature which enacted the Act now under our consideration had full knowledge of the internal classification of the advocates of the Calcutta and Bombay High Courts into Original Side advocates and Appellate Side advocates, the disability of the Original Side advocates of those two High Courts, namely, that they were not permitted "to act" on the Original Side and could only "appear and plead" on the instruction of an attorney and that the attorneys alone were permitted "to act" on that side of those two High Courts. Further the legislature was well aware of the bar imposed on foreign advocates, *i.e.*, advocates not on the roll of a High Court in the matter of their appearing and pleading in that High

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Court and the fact that eminent advocates of one High Court were not, on many occasions in the past, given permission "to appear and plead" in another High Court. The legislature knew that under Order I, rule 2, of the Supreme Court Rules an advocate had been defined as a person entitled "to appear and plead" before the Supreme Court and that Order IV, rule 30, precluded an advocate from acting as agent and an agent as advocate in any circumstances whatsoever. Finally, the legislature was cognisant of the fact that a Supreme Court advocate was a foreign advocate in all High Courts other than the one where he was enrolled and as such was not entitled as of right "to appear and plead" in those High Courts. With knowledge of all these facts and circumstances the legislature proceeded to enact this Act and, therefore, the provisions of the Act have to be considered in the light of these prevailing circumstances which undoubtedly form the background of this enactment and which cannot be overlooked or ignored.

Turning now to the text of the Act, one cannot but be impressed at once with the wording of the full title of the Act. Although there are observations in earlier English cases that the title is not a part of the statute and is, therefore, to be excluded from consideration in construing the statute, it is now settled law that the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment. (See Maxwell on the Interpretation of Statutes, 9th Edn., p. 44 and the cases cited therein). The full title of the Act now under consideration runs thus :

"An Act to authorise Advocates of the Supreme Court to practise as of right in any High Court."

One cannot fail to note the words "as of right" and the words "in any High Court" which follow immediately. Those two sets of words at once convey

to my mind that the Act is directly and intimately concerned with the disability imposed by a High Court on advocates not on its roll in the way of their appearing and pleading in such High Court without the permission of the Chief Justice and without satisfying other conditions, if any, and that their purpose is to remove and supersede that disability, so far as the Supreme Court advocates are concerned, by authorising them to do so as of right. The words "as of right" are quite clearly indicative of an independent statutory right as opposed to the conditional right dependent on the sweet will of the Chief Justice concerned. Those words are used by way of antithesis and bring out prominently the object of the Act. In view of that well-known disability which naturally was irksome, those words cannot fail to convey to one's mind the conviction that the purpose of the Act, as indicated by its title, is to confer on the advocates of the Supreme Court a right which was denied to them by the Rules of the High Courts referred to above. The language in which the title of the Act has been expressed appears to me to be a good and cogent means of finding out the true meaning and import of the Act, and, as it were, a key to the understanding of it.

The matter, however, does not rest on the title of the Act alone and I pass on to section 2 of the Act which is expressed in the following terms:

"Notwithstanding anything contained in the Indian Bar Councils Act, 1926 (XXXVIII of 1926), or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to *practise* in that High Court every Advocate of the Supreme Court shall be entitled as of right to *practise* in any High Court whether or not he is an Advocate of that High Court.

Provided that nothing in this section shall be deemed to entitle any person merely by reason of his being an Advocate of the Supreme Court to *practise*

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in a High Court of which he was at any time a Judge, if he had given an undertaking not to *practise* therein after ceasing to hold office as such Judge."

It will be noticed that the main body of the section consists of two parts, namely, a *non-obstante* clause beginning with the words "Notwithstanding anything" and ending with the words "permitted to practise in that High Court" and a positive part beginning with the words "every Advocate of the Supreme Court" and ending with the words "of that High Court." To clear the ground it will be useful, at the outset, to ascertain the scope and ambit of the *non-obstante* clause.

The controversy on this clause has raged round the question whether the adjectival clause, namely, "regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court" governs the words "the Indian Bar Councils Act" as well as the words "any other law" which immediately precede that clause. If that clause also attaches to and qualifies the words "the Indian Bar Councils Act" then there can remain no manner of doubt that the ambit, scope and purpose of the *non-obstante* clause are to supersede, not the whole of the Indian Bar Councils Act but, only that part of it which regulates the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court, that is to say, that the supersession of the Indian Bar Councils Act is only to the same extent to which that adjectival clause supersedes "any other law". Conscious that such a construction will run counter to his contention, it has been the endeavour of the petitioner Aswini Kumar Ghosh to keep the adjectival clause separated from the words "Indian Bar Councils Act". For this purpose he fastens on the comma appearing after the bracket and before the word "or" and contends that the comma indicates that the qualifying clause does not govern the Indian Bar Councils Act.

The High Court has rejected the contention of the petitioner Aswini Kumar Ghosh on two grounds. In the first place it has been said that the comma was no part of the Act. That the orthodox view of earlier English Judges was that punctuation formed no part of the statute appears quite clearly from the observations of Willes J. in *Claydon* v. *Green*(1). Vigorous expression was given to this view also by Lord Esher, M. R. in *Duke of Devonshire* v. *Connor*(2) where he said:

"In an Act of Parliament there are no such things as brackets any more than there are such things as stops."

This view was also adopted by the Privy Council in the matter of interpretation of Indian statutes as will appear from the observations of Lord Hobhouse in *Maharani of Burdwan* v. *Murtunjoy Singh*(3), namely, that "it is an error to rely on punctuation in construing Acts of the Legislature." Same opinion was expressed by the Privy Council in *Pugh* v. *Ashutosh Sen*(4). If, however, the rule regarding the rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation and punctuation is to be taken at least as *contemporanea expositio*, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with the plain meaning of the words, the Court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have. This leads me to the second ground on which mainly the High Court rejected the plea of the petitioner Aswini Kumar Ghosh, namely, that the word "other" in the phrase "any other law" quite clearly connects the Indian Bar Councils Act with other laws as alternatives and subjects both to the qualification contained in the adjectival clause. I find myself in complete

(1) (1868) L.R. 3 C.P. 511 at p. 522.
(2) (1890) L.R.Q.B.D. 468.
(3) (1886) L.R. 14 I.A. 30 at p. 35.
(4) (1928) L.R. 56 I.A. 93 at p. 100.

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agreement with the High Court on this point. If the intention was that the adjectival clause should not qualify the Indian Bar Councils Act, then the use of the word "other" was wholly inapposite and unnecessary. The use of that word unmistakably leads to the conclusion that the adjectival clause also qualifies something other than "other law". If the intention were that the Indian Bar Councils Act should remain unaffected by the qualifying phrase and should be superseded *in toto* for the purposes of this Act the legislature would have said "or in any law regulating the conditions etc." It would have been yet simpler not to refer to the Indian Bar Councils Act at all and to drop the adjectival clause and to simply say "Notwithstanding anything contained in any law". In the light of the true meaning of the title of the Act as I have explained above and having regard to the use of the word "other" I have no hesitation in holding, in agreement with the High Court, that what the *non-obstante* clause intended to exclude or supersede was not the whole of the Indian Bar Councils Act but to exclude or supersede that Act and any other law only in so far as they or either of them purported to regulate the conditions subject to which a person not entered in the roll of advocates of a High Court might be permitted to practise in that High Court and that the comma, if it may at all be looked at, must be disregarded as being contrary to this plain meaning of the statute.

Assuming, however, that the qualifying clause does not attach to the words "Indian Bar Councils Act", that circumstance will, nevertheless, make no difference in the legal position. Section 8(1) of the Indian Bar Councils Act provides as follows:

"No person shall be entitled as of right to practise in any High Court, unless his name is entered in the roll of the advocates of the High Court maintained under this Act:

Provided that nothing in this sub-section shall apply to any attorney of the High Court."

Section 14(2) runs thus:

"Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, or in the case of a High Court for which a Bar Council has been constituted under this Act, by such Bar Council under section 15, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court, such advocates shall not be entitled to practise therein otherwise than subject to such conditions."

Section 15(b) authorises the Bar Council, with the previous sanction of the High Court, to make rules to provide for and regulate "the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court". As already stated, a rule has been framed under this section by the Calcutta Bar Council as well as by the Bombay Bar Council. These three provisions are the only provisions of the Indian Bar Councils Act or the rules thereunder which place a bar against an advocate, not on the roll of a High Court, from practising in such High Court. It is interesting to note that the *non-obstante* clause in section 2 of the Act we are construing is couched in language which has unmistakably been taken from sections 14 (2) and 15 (b). There can be no question that a supersession of the Indian Bar Councils Act will supersede those provisions of that Act and the rules thereunder which "regulate the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court". Apart from this I find nothing in the Indian Bar Councils Act which has any direct bearing on section 2 of the Act we are construing or whose supersession is necessary to give effect to it. It is said that the rules of the Calcutta and Bombay High Courts do prescribe the qualifications to be possessed by persons applying to practise in those Courts and the conditions under which such persons will be entitled to practise and reserve to those Courts the right to grant

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or refuse any application for enrolment. It is also pointed out that the rules of the Original Sides of those two High Courts do determine the persons who shall respectively plead and act in those High Courts in the exercise of their original jurisdictions. It is next pointed out that sections 9 (4) and 14 (3) of the Indian Bar Councils Act preserve these rules and it is contended that a supersession of the Indian Bar Councils Act in its entirety will do away with sections 9(4) and 14(3) and the protection of those sections having been withdrawn, those rules will consequently stand abrogated, so as to facilitate the operation of the provisions of section 2 of the Act under review. I am unable to accept this argument as sound. Sections 9(4) and 14(3) do not purport to give any fresh validity to the rules of the Calcutta and Bombay High Courts. All that those sections do is to declare that nothing in the Indian Bar Councils Act shall be deemed to limit or affect the powers of those two High Courts which exist independently of those two sections and flow from their respective Letters Patent. Therefore, if the whole of the Indian Bar Councils Act including sections 9(4) and 14(3) stand abrogated such abrogation will not affect the existence or validity of the rules of those High Courts which will, nevertheless, continue in full force on the strength of the Letters Patent of those High Courts. It is clear, therefore, that even if the adjectival clause does not qualify the Indian Bar Councils Act and if, consequently, the *non-obstante* clause under review is taken to supersede the whole of the Indian Bar Councils Act, the effect of such supersession will, for the purposes of section 2, be only to do away with the provisions of sections 8(1) and 14(2) and the rule made under section 15(b) of the Indian Bar Councils Act in so far as they "regulate the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court" just as it will abrogate all other laws in so far as they regulate those very conditions. The supersession of the whole of the Indian Bar Councils

Act will not, therefore, affect the validity of the rules framed by the High Courts under their respective Letters Patent determining the persons who will act and who will plead or who will act and plead and those rules will prevail on their own strength and efficacy, although the rules regulating the conditions subject to which foreign advocates can be permitted to appear and plead will stand abrogated by reason of the *non-obstante* clause. In the premises, the result of the construction sought to be founded by the petitioner Aswini Kumar Ghosh on the existence of the comma in the *non-obstante* clause will be precisely the same as it would have been if the comma had not been there and the adjectival clause "regulating the conditions etc." also attached to and qualified the words "Indian Bar Councils Act." In short, there is no escape from the conclusion that the ambit, scope and effect of the *non-obstante* clause are to supersede the Indian Bar Councils Act and any other Act only in so far as they regulate the conditions referred to therein. I again emphasise that the rules of the different High Courts regulated the conditions subject to which a foreign advocate would be permitted "to appear and plead." There was no question of the foreign advocate "acting" in a High Court of which he was not an advocate. The purpose of the *non-obstante* clause is to supersede only the provisions of the Indian Bar Councils Act and the rules which regulated those identical conditions. It is not seriously disputed that the legislature in passing the *non-obstante* clause had only those conditions in mind. There can be no manner of doubt, therefore, that the words "to practise" in the *non-obstante* clause mean, in the context, "to appear and plead".

The petitioner Aswini Kumar Ghosh then falls back on a second line of reasoning. He urges that whatever may be the meaning, scope and effect of the *non-obstante* clause, it cannot possibly cut down the meaning of the positive words in the operative part of the section. His contention is that the High Court was wrong in holding that the *non-obstante* clause was

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coextensive with the operative part. While it may be true that the *non-obstante* clause need not necessarily be coextensive with the operative part, there can be no doubt—and the petitioner and Dr. N. C. Sen Gupta appearing for the Calcutta Bar Association and supporting the petitioner do not dispute—that ordinarily there should be a close approximation between the two. What he urges is that the Court should not create an ambiguity in the operative part and then use the *non-obstante* clause to cut down the meaning of the plain words used in the operative part of the section. The argument is that the words "to practise" cover both acting and pleading and that, therefore, the operative part of the section authorises the advocate of the Supreme Court as of right "to practise", that is, "to act and plead", in any High Court. The whole case of the petitioner is founded on this plea. It is necessary, therefore, to consider whether the critical words have that invariable and fixed meaning when used in relation to an advocate.

The verb "practise" according to the Oxford English Dictionary, Vol. VIII, p. 1220, means :

to work at, exercise, pursue (an occupation, profession or art);

to exercise the profession of law or of medicine.

Similar meaning is to be found assigned to the word in Dr. Annandale's New Gresham Dictionary. According to this meaning doctors "practise", consulting architects "practise" as well as lawyers "practise" but we know that each of them does different things. Coming to lawyers we find that there are different categories of lawyers all of whom "practise", although all of them do not do the same thing. Thus attorneys "practise" in the Original Sides of the High Courts of Calcutta and Bombay and the agents "practise" in the Supreme Court but we know that under the rules of those Courts the attorneys and agents only "act". The advocates also "practise" but we know that all of them do not perform the same functions. The advocates of all High Courts including those of the Appellate Sides of the Calcutta and

Bombay High Courts, under the rules of their respective High Courts, "act and plead" and, as the ambit of the profession of such advocates extends to acting and pleading, the words "to practise" in their application to those advocates undoubtedly mean "to act and plead". The advocates of the Original Sides of those two High Courts can, under the rules, only "plead" on the Original Side and the ambit and scope of the profession of these Original Side advocates being limited only to pleading, the words "to practise" used in reference to these advocates must mean "to plead" only. There are thus different species of lawyers, some of whom, *e.g.*, attorneys of the Original Sides of Calcutta and Bombay High Courts and agents of this Court, only "act", some others of whom, *e.g.*, the Original Side advocates of those two High Courts and of this Court, only "plead" and all the remaining advocates of all the High Courts both "act and plead". The scope of the professional activities of the different categories of lawyers thus varies but, nevertheless, they are all said "to practise". These words, therefore, connote the general idea of exercising the legal profession, which is their dictionary meaning, and in that general sense apply to all lawyers as a class or genus but at the same time they are capable, in their application to particular species or categories of lawyers, to connote the different professional attributes of those different categories or species.

Turning to the Indian Bar Councils Act we find that the expression "to practise" has been used in various sections in the generic sense I have mentioned. Let me illustrate my meaning by reference to a few sections. Section 4 of that Act deals with the composition of Bar Councils. Sub-section (1) provides that every Bar Council shall consist of 15 members of which 10 shall be elected by the advocates. Sub-section (2) then provides :—

"(2) Of the elected members of every Bar Council not less than five shall be persons who have for not less than ten years been entitled as of right to

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practise in the High Court for which the Bar Council has been constituted."

If we give the general dictionary meaning to the words "to practise" used in this sub-section then this sub-section becomes easily intelligible, but if we say that they mean "to act and plead" then the eligibility will be confined to the advocates who, under the rules, can "act and plead", *i.e.*, to the Appellate Side advocates, and the result of that construction will be that the advocates of the Original Sides of Calcutta and Bombay High Courts even though they are of ten years' standing will not be eligible for election, for such advocates do not and indeed cannot, under the rules, "act and plead". Such surely cannot be the case. It follows, therefore, that the words "to practise" in this sub-section have been used in their generic sense although they connote different things when applied to different categories of advocates all of whom are within the sub-section. Sub-section (3) runs thus:

"(3). Of the elected members of the Bar Councils to be constituted for the High Courts of Judicature at Fort William in Bengal and at Bombay such proportion as the High Court may direct in each case shall be persons who have for such minimum period as the High Court may determine, been entitled to practise in the High Court in the exercise of its original jurisdiction, and such number as may be fixed by the High Court out of the said proportion shall be barristers of England or Ireland or members of the Faculty of Advocates in Scotland."

If we give the words "to practise" their ordinary dictionary meaning, then the sub-section will be quite easy of comprehension but if we say that those words mean "to act and plead", then the sub-section will become meaningless, for those words in that sub-section refer to the practice of the Original Side advocates only who do not and, indeed, under the rules, cannot at all act on the Original Side. It is, therefore, clear that the words "to practise" have been used in both sub-sections in their generic meaning which is also their dictionary meaning, namely, "to

exercise their profession", although in their application to the different species who are within the sub-sections they mean different professional attributes. Thus, in sub-section (3) which applies to Original Side advocates only they must mean "to plead" whereas in sub-section (2) which applies to all categories of advocates the words have different meanings, that is to say, in relation to advocates other than Original Side advocates they mean "to act and plead" and in relation to the Original Side advocates they mean only "to plead". Same remarks apply to section 5 (1). It will be futile to refer to the principle that the same word should be given the same meaning wherever it occurs in the Act, for the context excludes the application of that principle. Take section 8 (2) of the Indian Bar Councils Act which provides:

"8. (1).....

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

(a) all persons who were, as advocates, vakils or pleaders, entitled as of right to practise in the High Court immediately before the date on which this section comes into force in respect thereof;....."

If we do not give to the words "to practise" in clause (a) their dictionary meaning but read them as meaning "to act and plead" the advocates practising, *i.e.*, only pleading on the Original Sides of the Calcutta and Bombay High Courts, will not find their names in the rolls maintained by their respective High Courts under this section. That exclusion is certainly not the purpose of this sub-section. Therefore, in this sub-section also the words "to practise" means "to exercise their profession". Same remarks apply to the proviso to section 8 (3) (b). I come next to section 14 which provides *inter alia*:

"14. (1) An Advocate shall be entitled as of right to practise—

(a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an Advocate;....."

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By sub-section (3) nothing in this section shall be deemed to limit or affect the power of the Calcutta and Bombay High Courts to make rules determining the persons who are respectively to plead and to act on the Original Sides of those High Courts. Both those High Courts have made rules under which an Original Side advocate can only "plead", the acting having been reserved exclusively for the attorneys. In the light of the context what is the meaning of the words "to practise" in sub-section (1) above? If we put the ordinary dictionary meaning on the words "to practise", namely, "to exercise his profession", the section will be found to be quite intelligible and workable; but if we take them to mean only "to act and plead" then the Original Side advocates who do not "act" but only "plead" will not, strictly speaking, be within the section and consequently will not be able to avail themselves of the protection of section 14 (1) (a). Can it, for a moment, be said that the section gives protection and security to all advocates other than the Original Side advocates and that the latter are not entitled as of right "to practise", *i.e.*, "to plead", in the High Court of which he is an advocate? That cannot be so. The very fact that the right is subject to the provisions of section 9 (4) and that the rule-making power of the two High Courts is not affected by virtue of section 14 (3) quite clearly show that the Original Side advocates who cannot act on the Original Side are intended also to be included in the term advocate used in sub-section (1). If, therefore, this section is to give any security to the Original Side advocates, as it does to the Appellate Side advocates, then we must read the words "to practise" in their ordinary dictionary meaning, namely, "to exercise his profession". It is thus clear that the words "to practise" have been used throughout the Indian Bar Councils Act in their general dictionary meaning mentioned above except at the end of section 9 (4). In the same way the word "practising" has been used in Order IV, rule 31, of the Supreme Court Rules in the same generic sense and being used in relation to

advocates of this Court it must mean "appearing and pleading". In the next following rule the same word has been used in its dictionary meaning although having been used in relation to agents of this Court it must mean "acting". The same generic meaning given to the words "to practise" will make section 4 of the Legal Practitioners Act, 1879, easily intelligible and workable.

The petitioner Aswini Kumar Ghosh, on the other hand, relies on article 220 of the Constitution and points out that while the words used in the body of the article forbid judges "to plead or act" the marginal note to the article describes the subject-matter of the article as "prohibition of practising" and concludes that "to practise" means "to act and plead". In agreement with the High Court I am unable to accept this reasoning. Even assuming that the marginal note may by looked at in considering the article it only means that the draftsman of the marginal note considered that the single word "practise" would be a compendious one. Nobody disputes that the words "to practise" may, in a particular context, mean "to plead or act" but it does not follow that it invariably has that meaning. Further it is clear, as the High Court points out, that what the draftsman did was to find a word which would cover both acting and pleading without attempting to bring out the technical distinction between the two. Nor do I think, for reasons stated by the High Court, that entry 78 of List I in the Seventh Schedule lends any support to the petitioner's contention.

The petitioner then refers us to the decision in *Laurentius Ekka* v. *Dhuki Koeri*(1) in support of his contention that the judicially accepted meaning of the words "to practise" is "to appear, act and plead". In that case the question was whether an advocate on the roll of the Patna High Court could present and move a review petition in a subordinate court unless he filed a Vakalatnama or was instructed by a pleader

(1) (1925) I.L.R. 4 Pat. 766.

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of the subordinate court. It was held that an advocate of the High Court, unlike a pleader, did not need to be appointed in writing to act on behalf of his client and even when verbally appointed he could under Order III, rule 1, of the Code of Civil Procedure appear, plead and act on behalf of his client and, therefore, when section 4 of the Legal Practitioners Act, 1879, provided that every person entered as an advocate or vakil on the role of any High Court under the Letters Patent should be entitled to "practise" in all Courts subordinate to such High Court, the word "practise" as applied to an advocate of the Patna High Court meant "appear, plead and act". The ratio of the decision is obvious. The scope and ambit of the Patna High Court advocate's profession covered acting and pleading and when such an advocate was given the right to "practise" in the subordinate court he was authorised to exercise his profession in full, *i.e.*, to act and plead in the subordinate court. In short, the advocate carried the attributes of his profession with him even when he went to exercise his profession in the lower court. This decision is no authority for the proposition that the words "to practise" have a fixed and invariable meaning comprising acting and pleading in all cases.

The petitioner Aswini Kumar Ghosh then referred us to the case of *In re Powers of Advocates*(2). In Madras the High Court in exercise of its powers under clause 9 of the Letters Patent framed a rule empowering advocates to appear, act and plead on the Original Side. That rule was held to have been validly made in two earlier decisions. But Rules 128 and 129 of the Insolvency Rules permitted an advocate only to "appear and plead" in the Insolvency jurisdiction and the attorney to act there. In these circumstances the question arose in the Madras case whether advocates enrolled under the Indian Bar Councils Act, 1926, were entitled to "act" in the Insolvency jurisdiction of the Madras High Court, notwithstanding that under the rules framed by the High Court they were

(2) (1928) I.L.R. 52 Mad. 92.

only entitled to "plead" and the Full Bench answered the question in the affirmative. The reasoning underlying this decision, as I understand it, was that the general ambit and scope of the profession of a Madras High Court advocate being, according to its rule, "to appear, act and plead" in the Original Side, the words "to practise" used in section 8 (1) and section 14(1) of the Indian Bar Councils Act must, in relation to him, mean "to appear, act and plead". Rules 128 and 129, however, said that he could only appear and plead but not act. There being no saving of the power of the Madras High Court as there was of that of the Calcutta and Bombay High Courts by section 9 (4) and section 14 (3) and those insolvency rules being inconsistent with the provisions of sections 8(1) and 14(1) as construed by the Full Bench, that rule should, under sections 19(2) be deemed to have been repealed. I am unable to accept the correctness of this reasoning. The combined effect of the two sets of rules was that a Madras advocate was entitled to act and plead throughout the Original Side except in Insolvency Court which was also a part of the Original Side. It was, therefore, not correct to say that the Madras advocate was entitled to act and plead in the Original Side. The passage in the judgment of Kumaraswami Sastri J. at p. 103, namely that "the word 'practise' ordinarily means 'appear, act and plead', unless there is anything in the subject or context to limit its meaning" is not supported by any authority and appears to me to be too wide. Indeed, the learned Judge himself recognised this, for throughout the judgment it was emphasised that the word "practise", when applied to a Madras Advocate, meant "to appear, act and plead". It is clear from that judgment that, according to the learned Judge, the words had not that wide meaning in their application to the Original Side Advocates of the Calcutta and Bombay High Courts. In any event, that passage should, in the context, be limited in its application to the Madras High Court advocates and all advocates of all other High Courts who, by their rules, are permitted to act

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and plead, for it cannot possibly have that meaning in relation to an Original Side advocate who is permitted only to plead. This passage in the Madras decision could not have been intended as an enumeration of the professional activities of an advocate as forming the invariable contents of the words "to practise" or as an enunciation of a fixed meaning of general application. In this country where there exists, as a historical fact, a clear division of legal practitioners into three separate classes, namely, those who act only, those who only plead and those who do both act and plead such a definition will be wholly inaccurate. It is necessary, therefore, to give to those words their generic meaning I have mentioned. In this view of the matter, I agree with the High Court that the petitioner can derive no support for his contention from either of these two decisions.

My attention has also been drawn to the case of *The Queen* v. *Doutre*(1) where it was held that in Canada where the functions of Barristers and Solicitors are united in the same person, the rules of English law which precludes a Barrister to sue for his fees do not apply and that a Quebec advocate could sue for his remuneration on a *quantum meruit* basis. I do not see how that case throws any light on the problem before us. In Quebec all advocates "act and plead" and as regards Quebec advocates the critical words may cover both acting and pleading, but how can that circumstance assist us in ascertaining the meaning of those words in enactments of our country where we have a clear division of the legal practitioners into three categories I have mentioned?

The result of the foregoing discussion as to the meaning of the words "to practise" appears to me to be that in relation to lawyers as a class they mean "to exercise their profession" which is their dictionary meaning and which is wide enough to cover the activities of the entire genus of lawyers. They are words of indeterminate import and have no fixed connotation or content. In their application to particular

(1) (1883) 9 App. Cas. 745.

species of lawyers their meaning varies according to the scope and ambit of the profession of that particular species in relation to whom they may be used, and such meaning has to be ascertained by reference to the subject or context. Further, the Legislative technique, as is evident from the Indian Bar Councils Act, the Legal Practitioners Act and the Rules of the Supreme Court to which reference has been made, is to use these neuter words in a generic sense although in their application to specific categories or species of lawyers they have different connotations which are to be ascertained from the context in which they are used. The question, therefore, at once arises: What in the context and on a true construction of the Act we are considering, is the meaning of the words "to practise"?

The petitioner Aswini Kumar Ghosh urges that the words "to practise," in relation to all advocates of all the 20 High Courts, except the Original Side advocates of the Calcutta and Bombay High Courts only, mean "to act and plead" and seeing that this is the meaning applicable to the vast majority of advocates, those words must be given that meaning. Am I to apply the rule of majority in construing a statute? Am I to assume that the Legislature had forgotten or deliberately ignored the hard historical fact that there exists a large body of advocates of not inconsiderable importance who "practise", that is only "plead" on the Original Side of two premier High Courts in India? Or am I to assume that the Legislature intended, by the use of a dubious expression of indefinite import, to swamp one whole class of legal practitioners, namely, the Attorneys of those two High Courts? I find not the slightest indication of such intention anywhere in this Act. On the contrary, the title of the Act and the *non-obstante* clause of section 2 itself run counter to such contention. I have already pointed out that the words "to practise" have been used in the *non-obstante* clause in the sense of "appearing and pleading" only and that nobody can for a moment doubt that in the *non-obstante* clause the

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Legislature had in mind the provisions of the Indian Bar Councils Act and the rules of the High Courts regulating the conditions subject to which a foreign advocate was permitted "to appear and plead" in a High Court of which he was not an advocate. If that be so, it is legitimate to infer that the Legislature in the operative part of the section gave expression and effect to what it had in its mind when enacting the *non-obstante* clause. If the intention of the Legislature were otherwise, why did not the Legislature say openly and in a straightforward way that it gave the Supreme Court advocate the right "to act and plead" in any High Court? Why did it use the dubious words "to practise"? It is not correct to say that those words have been used in the Indian Bar Councils Act only in the sense of "acting and pleading". As already explained, those words have been used in their ordinary dictionary meaning, namely, "to exercise his or their profession" so as to cover the entire genus or class of Advocates, although in their application to different categories or species they have different connotations as explained above. Seeing that the legislative practice is to use those words in their general dictionary meaning, there is no reason to suppose that the Legislature intended to depart from this practice while enacting this piece of legislation. It is asked: why did not the Legislature then insert in this Act a saving clause like sections 9(4) and 14(3) of the Indian Bar Councils Act? The argument is that the absence of such a saving clause in this Act constitutes a departure from the legislative practice followed in the Indian Bar Councils Act, and, therefore, the words "to practise" in the operative part of section 2 must have their widest meaning. A little reflection will show that this argument is not sound. The rule-making power of the High Courts under clause 9 of the Letters Patent was and is with respect to advocates, vakils and attorneys admitted and enrolled by the High Courts. The Indian Bar Councils Act dealt with advocates enrolled by the High Courts and, therefore, it was

considered safer to provide that nothing in that Act should affect or limit the rule making powers of the High Court. Indeed, if the critical words were, as I think, used in a generic sense, the saving clauses must have been inserted *ex abundanti cautela*. Be that as it may, as the High Courts' power to make rules under clause 9 extended only to the advocates, vakils and attorneys enrolled by them and as the Indian Bar Councils Act also dealt with advocates enrolled by the High Courts, the insertion of the saving clauses in the last mentioned Act is intelligible. But a saving of the rule-making powers of High Courts over their own advocates etc., is entirely out of place in an Act which is concerned not with High Court advocates but with Supreme Court advocates only. The High Courts have no power under clause 9 of the Letters Patent to make any rule to govern the conduct and activities of the Supreme Court advocates and this Act only deals with Supreme Court advocates and confers a new right on them. Therefore, a saving of the High Courts' rule making power over their advocates would have been wholly meaningless and inappropriate, for such saving clause would not have given the High Courts any power to make any rules with respect to the Supreme Court advocates. There was, therefore, no necessity or occasion for inserting any saving clause on the lines of sections 9 (4) and 14 (3) of the Indian Bar Councils Act. Nothing can, therefore, be founded on the absence of a saving clause on the lines of that Act.

The petitioner Aswini Kumar Ghosh argues that the text of the original Bill, the statement of objects and reasons over the signature of the Law Minister attached thereto and the debates in the Legislature resulting in the deletion of what was clause (a) of the proviso as it existed in the original Bill will clearly show what the intention of the Legislature was. In the original Bill as introduced in the Legislature there was a proviso to section 2 which ran thus:

"Provided that nothing in this section shall be deemed to entitle any person, merely by reason of his being an Advocate of the Supreme Court,—

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(a) to plead or to act in any High Court in the exercise of its original jurisdiction; or

(b) to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold office as such Judge."

The argument is that the objects and reasons clearly show that the intention was that section 2 should not affect the Original Sides of the two High Courts, and clause (a) was inserted in the proviso in order to achieve that purpose. This shows that if clause (a) was not there, section 2 would have entitled the Supreme Court advocate "to practise", *i.e.*, "to appear, act and plead" in all High Courts in all their several jurisdictions. This conclusively shows that the words "to practise" were used in that larger sense. Indeed in the objects and reasons those words were expressly stated to be synonymous with "to act and plead". The argument is apparently formidable but on reflection will be found to be devoid of any substance.

There is authority for the proposition that the proceedings of the Legislative Council are to be excluded from consideration in the judicial construction of an Act and that the debates in the Legislative Council, reports of select committees and statements of objects and reasons annexed to a Bill may not be referred to: *Administrator-General of Bengal* v. *Prem Lal*(1). When construing section 68 of the Indian Companies Act, 1882, the Privy Council in *Krishna Ayyangar* v. *Nella Perumal*(2) observed that no statement made on the introduction of the measure or its discussion can be looked at as affording any guidance as to the meaning of the words. It is neither necessary nor profitable to go into the numerous decisions all of which it may be difficult to reconcile but it is quite clear from the decision of this Court in the case of *A. K. Gopalan* v. *The State of Madras*(3) that the debates and speeches in the Legislature which reflect the individual opinion of the speaker cannot

(1) (1895) 22 I.A. 107.
(2) (1920) 47 I.A. 33.
(3) [1950] S.C.R. 88.

be referred to for the purpose of construing the Act as it finally emerged from the Legislature and so the debates must be left out of consideration.

The statement of objects and reasons attached to the Bill only depicts the object which the sponsor of the Bill had in mind, but it throws no light on the object which the Legislature as a body had in mind when passing the Bill into an Act. If I may borrow and adapt the felicitous language used by my Lord the present Chief Justice in that case those objects and reasons may at best be indicative of the subjective intention of the Law Minister who sponsored the Bill but they could not reflect the inarticulate mental processes lying behind the majority vote which carried the Bill. Nor is it reasonable to assume that the minds of all those legislators were in accord. The first Privy Council decision referred to above rejected any reference to the debates or the objects and reasons. So did M. N. Mukherji J. in *Debendra Narain Roy* v. *Jogendra Narain Deb*(1). Reference may also be made to Craies on Interpretation of Statutes, 5th Edn., at p. 123, regarding the memoranda attached to the Bill. In my opinion it is safer to follow the orthodox English view and leave the objects and reasons out of consideration.

The petitioner Aswini Kumar Ghosh points out that in *Gopalan's case* (supra) this Court did look at the original draft of what eventually became article 21 of the Constitution as throwing some light on the construction of that article and urges that we should look at the original Bill and draw appropriate inferences from the fact of the omission of clause (a) of the proviso from the Act. What was looked at in that case was the Report of the Drafting Committee appointed by the Constituent Assembly. That Report was akin to a Report of a Select Committee made after consideration of a Bill referred to it by the Legislature for consideration. In that Report the Drafting Committee recommended the substitution of the expression "except according to procedure established

(1) (1936) A.I.R. 1936 Cal. 593 at p. 619.

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by law" taken from the Japanese Constitution for the words "without due process of law" which occurred in the original draft "as the former is more specific." The Drafting Committee further explained that they had attempted to make the fundamental rights conferred by the article in question and the limitations to which they must necessarily be subject as definite as possible since the Courts may have to pronounce upon them. The Constitution as it was finally adopted showed that the Constituent Assembly had accepted the amendment suggested by the Drafting Committee. The fact that the Drafting Committee was, in a sense, the agent of the Constituent Assembly, and that the amendment proposed by the Drafting Committee was in fact adopted by the Constituent Assembly, may conceivably lead to the inference that the reasons given by the Drafting Committee were also accepted by the Constituent Assembly and that the intention of the agent, the Drafting Committee, reflected the intention of the principal, the Constituent Assembly. This, I apprehend, was the underlying reason why the majority of this Court expressed the view that the Report of the Drafting Committee could be looked at as historical material throwing some light on the question of construction of the article 21. That underlying reasoning does not, however, apply to the present case. This Court, consistently with the principles laid down in numerous judicial decisions, some of which I have cited above, held that recourse could not be had to the debates in the Legislature in construing the Act. To keep out the debates which may, in some degree, have disclosed the considerations operating on the minds of the vocal section of the Legislature and the intention with which they moved the amendment and then to refer to the text of the original Bill and the fact that some words or clauses thereof do not find a place in the Act as eventually passed in order to ascertain the state of mind of the members of the Legislature who passed the Act will, to my mind, be indicative of a mental process which can hardly be

called logical. While, by reason of my utmost respect for my learned colleagues who had pronounced upon the admissibility of the Report of the Drafting Committee, I feel pressed to adhere to and abide by the views expressed by them on that point, I am certainly not prepared to go further and to extend the principle of that decision on that question by permitting a reference to the original Bill.

Assuming that the reasoning of the decision in *Gopalan's case*(1) regarding admissibility of the Report as an aid to construction may, in certain circumstances, be applicable to the original Bill, we have yet to consider whether in the case now before us the original Bill should be referred to. In *Gopalan's case*(1) Kania C. J. said at p. 110:—

"The report may be read not to control the meaning of the articles, but may be seen in case of ambiguity."

Again at p. 111 the learned Chief Justice stated:—

"Resort may be had to these sources with great caution and only when latent ambiguities are to be resolved."

In point of fact the learned Chief Justice did not find the words of article 21 to be ambiguous so as to require recourse to the Report of the Drafting Committee to ascertain the intention of the Constituent Assembly. My Lord the present Chief Justice and Fazl Ali J. and Mukherjea J. did refer to the Report. In the view taken by Mahajan J. it was not necessary for him to express any opinion on this instant problem. I did not refer to the debates or to the Report of the Drafting Committee and stated at p. 297 and at p. 323 that I would express no opinion as to the admissibility of the Report or the debates. It is, however, clear from the passages I have quoted from the judgment of the late Chief Justice that the Report of the Drafting Committee could be looked at only to resolve ambiguity and not to control the meaning of the article if it was otherwise plain, for the intention of the Constituent Assembly was to be gathered primarily from

(1) [1950] S.C.R. 88.

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the words used in the Constitution. The question at once arises: is there any ambiguity in section 2 as it now stands which requires a reference to the original Bill for its solution? Having regard to the state of the law as it existed before this Act was passed, namely, that by the rules of all High Courts an advocate of one High Court could only "appear and plead" in another High Court if he could obtain the permission of the Chief Justice of the latter Court, the mischief that followed from these rules and was unprovided for, namely, that even eminent advocates were not accorded such permission for no apparent reason and the fact that the object of this Act, as indicated in the full title and the *non-obstante* clause in section 2 was undoubtedly to remedy this defect. So far as the Supreme Court advocates were concerned—all which circumstances are to be taken into consideration in construing an Act as stated in *Heydon's case* (1)—and finally the legislative practice of using the words "to practise" in their ordinary dictionary meaning, as I have explained already, I find no ambiguity whatever in the operative part of section 2. The meaning and intent of the section appear to me reasonably plain and I do not consider it necessary to have recourse to the original Bill at all to ascertain the meaning and intent of the words used in the section. It is wrong to imagine or create ambiguity and then to call in aid the original Bill and to speculate as to the intention of the Legislature.

Again, assuming that the original Bill has to be looked at in ascertaining the meaning of section 2, I do not derive any assistance from the mere circumstance that clause (a) of the proviso which appeared in the original Bill does not find a place in the Act as it finally emerged from the legislative anvil. The mere fact that that proviso was omitted from the Act as finally passed does not by any means lead us to the conclusion that the construction put upon the section by the petitioner Aswini Kumar Ghosh must be correct. There is no reason to assume that the

(1) (1584) 3 Co. Rep. 7b.

legislators read the words "to practise" as meaning "to appear, act and plead". If they read the words to mean "to appear and plead" only, which is the ambit and scope of the profession of Supreme Court advocates under the rules of this Court and of the Original Side advocates of those two High Courts then, in so far as the proviso purported not to extend the application of the section to "acting" on the Original Side it was wholly unnecessary and may have accordingly been deleted as not being necessary. Further, if the intention was to give the Supreme Court advocates a right to appear and plead only in any High Court in any of its jurisdictions, then the proviso, in so far as it purported not to extend the section to pleading on the Original Side of those two High Courts, could not be retained. If, therefore, the intention of the operative part of the section was that the Supreme Court advocate would have the right only "to appear and plead", which is consonant with the functions of a Supreme Court advocate and also co-extensive with the rights of the Original Side advocates of the Calcutta and Bombay High Courts under the rules, the proviso had to be deleted in full and, therefore, no argument can be founded on the fact of such deletion. We have, therefore, to construe the operative part of the section by reference to the intention we can gather primarily from the language used in the section and other parts of the Act itself.

The Legislature which enacted the statute was well aware of the state of the law as embodied in the rules of different High Courts preventing an advocate of one High Court from, as of right, "appearing and pleading" in another High Court of which he was not an advocate. The mischief of withholding of the permission by the Chief Justices on no better ground than the absence of reciprocity between the High Courts was notorious. The Act set out to remedy that mischief as is obvious from the full title and the *non-obstante* clause in section 2 of the Act as I have hereinbefore explained. It was known to the Legislature that an advocate was by Order I, rule 2, of the Supreme

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Court Rules defined as a person entitled only "to appear and plead" before the Supreme Court, that under Order IV, rule 11, no person could appear as an advocate unless instructed by an agent and that under Order IV, rule 30, such an advocate could in no circumstances "act" as an agent. In short, the Legislature knew that the scope or ambit of the Supreme Court advocate's profession was only "to appear and plead". With all this knowledge the Legislature enacted section 2 authorising every advocate of the Supreme Court "to practise as of right in any High Court". Applying the dictionary meaning to the word "practise," the section authorises every Supreme Court advocate "to exercise his profession as of right in any High Court". The scope and ambit of the Supreme Court advocate's profession being only "to appear and plead" there can be no escape from the conclusion that the section authorises the Supreme Court advocate only "to appear and plead" in any High Court. The reasoning is the same as that adopted or involved in the Patna case referred to above. An advocate of the Patna High Court was, under its rules, entitled "to appear, act and plead" in that High Court. When section 4 of the Legal Practitioners Act authorised such advocate "to practise" in the subordinate Court it was held in the Patna case to mean that the advocate could do all that he could do in the High Court, namely, "appear, act and plead". The words "to practise" were held to cover all these activities not because those words had that invariable meaning but because those words had that meaning only in relation to advocates who by the rule of the High Courts were entitled "to appear, act and plead". In short, the content of those words varies with the ambit and scope of the profession of the advocate with regard to whom they are used. On a parity of reasoning, the Supreme Court advocate being entitled only "to appear and plead", when section 2 authorised him "to practise" in any High Court, it must be taken to have meant that he was authorised to do in the High Courts all that he was entitled to do in the

Supreme Court, namely, "to appear and plead" only. This construction appears to me to be quite logical and calculated to give effect to the object of the Act. It brings about a close approximation between the *non-obstante* clause and the operative part of the section which should be the aim of every well drawn statute.

It is asked: how can a Supreme Court advocate, who can only "appear and plead" when he is instructed by an agent, "appear and plead" in any High Court where there are no Supreme Court agents to instruct him? This, in my opinion, is taking an extremely narrow view of the matter. The Supreme Court advocate's profession being confined only to appearing and pleading, when he is authorised "to practise", *i.e.*, to exercise his profession in any High Court, he must carry with him his professional limitations but must be governed by those rules of High Courts which regulate the practice of advocates who can only "appear and plead" in the High Courts, for he cannot practise in vacuo. Seeing that there are persons authorised "to act" in every High Court who may instruct another advocate, no practical difficulty can arise in the way of the Supreme Court advocate appearing and pleading in the High Court. Under Ch. I, rule 38, of the Calcutta Original Side Rules a Barrister advocate of any other High Court or an Original Side advocate of Bombay is permitted to "appear and plead" in the Original Side of the Calcutta High Court with the permission of the Chief Justice. Surely, nobody has ever suggested that such a foreign advocate must carry with him an instructing advocate or attorney of his own court who is competent to act in order to instruct him when he appears and pleads in the Calcutta High Court. He is instructed by an attorney of the Original Side of the Calcutta High Court without any difficulty. Same remarks apply when an Original Side advocate of Calcutta goes to appear and plead on the Original Side of Bombay under Ch. I, rule 6, of the Bombay rules, for surely such an advocate does not carry a Calcutta attorney with him but is quite satisfactorily

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instructed by a Bombay attorney. An Original Side advocate of the Calcutta or Bombay High Court who cannot appear on the Original Side unless instructed by an attorney can and frequently does appear and plead on the Appellate Side on the instruction of an advocate of the Appellate Side who being entitled to act can instruct the Original Side advocate to appear and plead. If we adopt this construction, the Act becomes workable, but if we adopt the construction suggested by the petitioner, then the Supreme Court advocates practising in High Courts by virtue of the Act will become freelances creating chaos and confusion as I shall hereinafter more fully explain. In my opinion there is no substance at all in this objection of the petitioners.

It is next pointed out that the result of this construction will be to make the new right illusory in that a Supreme Court advocate will not be entitled to "act" even on the Appellate Side of a High Court where he is not enrolled and such a result will militate against the principle of the unification of the Indian Bar. This objection is obviously based on the assumption that the object of this Act is to bring about such a drastic and far-reaching result. There is no warrant which I can see for any such assumption. I have already mentioned that the point of controversy on this subject was that an advocate on the roll of one High Court could not as of right "appear and plead" in other High Courts but had to depend on the good graces of the Chief Justices of such other High Courts who frequently withheld the requisite permission even to very eminent advocates. There was hardly ever any claim made by an advocate of one High Court "to act" as an advocate of another High Court of which he was not an advocate. The limited object of this Act appearing from its full title and the *non-obstante* clause as explained above was to remedy only this particular defect by providing that an advocate of the Supreme Court would be entitled as of right "to practise", *i.e.*, exercise his profession, *i.e.*, "to appear and plead", in any High Court even though

he was not on the roll of that High Court. This certainly was an important step in the process of bringing about uniformity in the Indian Bar, for it did bring into being a category of advocates who might "appear and plead" in all Courts throughout India and form the nucleus of an all India Bar. More than this was not within the scope and object of this Act as I apprehend it. To adopt a construction which will permit a Supreme Court advocate who is also enrolled in the High Court of, say Travancore-Cochin in the south or of the State popularly called Pepsu in the north, to go and "act" in the Original Sides of the High Court of Calcutta or Bombay which the advocates of those High Courts cannot do, will lead to no end of confusion as will be explained more fully hereafter and that consideration alone should induce me to discard the petitioners' construction and adopt a construction which will not give rise to practical inconvenience.

It is pointed out that while this construction may bring about a perfect approximation between the *non-obstante* clause and the operative part of section 2 by entitling only foreign Supreme Court advocates "to appear and plead" in any High Court as of right, it runs counter to the concluding words of the operative part of section 2, namely, "whether or not he is an Advocate of that High Court", for, it is urged, those words clearly indicate that the section purports to confer on a Supreme Court advocate the right to practise not only in a High Court of which he is not an advocate, but also to give him some right in relation to his own High Court. The Court below has held that the words "whether or not" are not quite apposite and that what was meant was that a right was given to every Supreme Court advocate "to practise" in any High Court even if he was not an advocate of that High Court. In other words, the Act itself gives a right to the Supreme Court advocate to practise as of right in any High Court and that being so it was immaterial to consider whether he was an advocate of a particular High Court or not, *i.e.*,

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irrespective of his being or not being an advocate of that High Court. I am inclined to agree with this view. Let me, however, test the soundness of the view propounded by the petitioner on the strength of the words "whether or not etc." Take the case of an advocate of the Madras High Court. Under the rules of the Madras High Court he is entitled "to appear, act and plead" in all its jurisdictions. When such an advocate is enrolled as an advocate of the Supreme Court, section 2. of the Act, as construed by the petitioner, really gives him no additional right in relation to his own High Court, for already he is entitled "to appear, act and plead" there. That is the position also with regard to the advocates of all High Courts, other than the High Courts of Calcutta and Bombay in the matter of their right to practise in their respective High Courts. Seeing that the advocates of 18 High Courts did not in fact get any new right in their respective High Courts, it cannot reasonably be said that the object of the Act was to give any right to an advocate of a particular High Court in respect of his own High Court. It is pointed out that an advocate enrolled on the Appellate Sides of the Bombay and Calcutta High Courts is not, as of right, entitled to appear, act and plead on the Original Side and the object of the Act was to give those Appellate Side advocates of the Calcutta and Bombay High Courts some additional rights in the Original Side of their own High Courts. In view of the fact that the Act gives no additional right to the advocates of any of the 18 High Courts in relation to their respective High Courts it is difficult to imagine that the object of the Act was to bestow some special favours only on the advocates of the Appellate Sides of the Calcutta and Bombay High Courts. Therefore, it appears to me that the words "whether or not etc." read in the light of the purpose of the Act appearing from the full title and the *non-obstante* clause only emphasise that the object was to give the Supreme Court advocate a statutory right to practise in any High Court

of which he was not an advocate, irrespective of his other rights, if any. It is a new right given by the Act *proprio vigore* to a class of foreign advocates. Further, if the use of the words "whether or not etc." must necessarily mean that the object of the Act was to give a special right to an Appellate Side advocate of the Calcutta and Bombay High Courts in relation to his own High Court it does not necessarily follow that the words "to practise" must be given such a wide meaning as would also cover acting, for if the words "to practise" are read as extending only to appearing and pleading, even then the Appellate Side advocates of the Calcutta and Bombay High Courts would get some additional right in their own High Courts in that they become entitled by virtue of their position as Supreme Court advocates "to appear and plead" on the Original Side without having to take steps under the respective rules of those High Courts to entitle them to appear and plead on the Original Side. In this view of the matter also the concluding words "whether or not etc." cannot affect the construction put by me on the operative part of the section.

Even if I am wrong in adopting the foregoing line of reasoning, the petitioner will yet have to meet an alternative construction which has commended itself to the learned Judges of the High Court and my learned brother Mukherjea, and which I am also prepared to accept as a cogent alternative. The Act authorises every advocate of the Supreme Court as of right "to practise" in any High Court. The use of the words "to practise" in relation to an advocate clearly indicates that he is to exercise the profession of an advocate. To exercise the profession of an advocate in a High Court must involve the observance of the rules of practice of that High Court. It is urged that this construction amounts, in reality, to adding words to the section, namely, "as an advocate of that Court" or "according to the rules of that Court." This contention is founded on a clear misapprehension, for I am really not adding anything at

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all but I am only stating what is implicit in the section as it stands. In other words, I am construing the words of the section and ascertaining its true meaning and import. The necessary implication of the fact that the Supreme Court advocate is to exercise his profession in any High Court may well be that he becomes entitled to do whatever an advocate of that particular High Court can do under the rules of practice of that High Court. Thus when the Supreme Court advocate goes to practise in the Appellate Side he will be entitled to act and plead as an Appellate Side advocate does and when he goes to practise in the Original Side he will only plead as an Original Side advocate does and in either case he must abide by the relevant rules, for he must practise as an advocate of the particular High Court does, namely, under and subject to the rules. Nobody has ever suggested that an advocate or vakil authorised to practise in subordinate courts or in any other High Court under section 4 of the Legal Practitioners Act was not bound by the rules of the Court where he went to practise.

It is argued that the rules of the High Courts of which the Supreme Court advocate is not an advocate cannot in terms apply to him when he chooses to exercise the right given to him by the Act, for those rules apply to the advocates of those High Courts. This again, I conceive, is taking a narrow view of the matter. The rules of the High Court certainly apply to the advocates entitled to practise in that High Court and when an Act invests an advocate, who is not an advocate of a particular High Court, with the right to practise in that High Court, for all intents and purposes such an advocate becomes, as it were, a statutory advocate of that High Court and as such becomes invested with the rights as well as the obligations of an advocate of that Court. In other words, the Act *proprio vigore* makes him a person entitled to practise in that Court and as such amenable to and governed by all the rules applicable to and regulating the practice of persons entitled to

practise in that Court, except, of course, such of the rules as are contrary to, *i.e.*, destructive of this new statutory right and which must, therefore, as regards him, be deemed to be inoperative. Surely the Supreme Court advocate cannot practise *in vacuo*. To accede to the contention of the petitioner is to say that a body of professional men, namely, the Supreme Court advocates, have been let loose "to practise", *i.e.*, to "act and plead" in all High Courts in all their jurisdictions untramelled by any rules of practice—a proposition which, in my opinion, has only to be stated to be rejected. It is fraught with grave dangers and, at any rate, will inevitably lead to practical inconvenience and to no end of utter confusion. If that view were accepted the Supreme Court advocate will be entitled to walk in and walk out of the High Court in any costume that his fancy may choose. He may throw to the winds the rules of precedence of advocates including that of the Advocate-General. According to the rules of the Original Side of Calcutta an attorney is authorised to cause service of notice of motion and chamber summons but the opposite party will not be bound to accept service from the Supreme Court advocate who is not so authorised. According to the Calcutta Original Side rules an attorney is personally responsible for the requisition fees, deposition fees etc., but a Supreme Court advocate acting in the Original Side will not be so responsible at all. Nor will the High Court be able to get at the Supreme Court advocate to realise the fees if he is not to be governed by the rules governing the conduct of persons who act on the Original Side. The attorneys acting in the Original Side cannot charge the client with a pice over and above the fees prescribed in the rules of taxation as between attorney and client but a Supreme Court advocate acting in the Original Side, not being in terms bound by the taxation rules, will be free to fleece the client to any extent he can. The attorneys being officers of the Court are under the rules and the Letters Patent amenable to the disciplinary jurisdiction of the High

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Court but a Supreme Court advocate may with impunity snap his fingers at the High Court, for under no provision of law as it exists except section 2 of the Act can the High Court exercise disciplinary jurisdiction on such advocates. It is unnecessary to multiply instances of confusion. This one consideration of inconvenience and confusion is enough to discard the construction sponsored by the petitioners, for the true rule of construction is that if two constructions are possible, that which leads to absurdity and brings about practical inconvenience and encourages confusion and chaos must be eschewed. Neither of the two constructions suggested by me will have any such consequence and either of them will make the section workable in practice and at the same time accomplish a considerable measure of unification of the Indian Bar. The petitioners see the difficulty and to get over it suggest that the Supreme Court advocate practising in a High Court will and can be bound by the existing ordinary rules of practice except those that prevent him from acting and pleading or that the High Court may frame separate rules for the Supreme Court advocates practising before them. This very concession at once gives away the whole case of the petitioners. As I have already stated clause 9 of the Letters Patent empowers the High Courts to approve, admit and enrol advocates, vakils and attorneys and *such* advocates, vakils and attorneys —I emphasise the word "such"—are authorised to appear in the High Courts and to plead or to act or to do both according to the rules made by the High Courts. The High Courts' rule-making power as to enrolment of advocates, vakils and attorneys and their respective functions and powers is thus quite clearly confined to advocates, vakils and attorneys admitted and enrolled by them and does not and cannot extend to Supreme Court advocates who are not on their rolls. Section 119 of the Code of Civil Procedure excludes the application of the rules of practice relating to advocates and pleaders from Original Side of High Courts unless adopted by them by rules framed

under the Letters Patent which, as already stated, governs only their own advocates. The Supreme Court of India, under article 145, can only make rules for regulating generally the practice and procedure of the Supreme Court including rules as to the persons practising before it. That article does not authorise the Supreme Court to make rules regulating the practice and procedure of High Courts or the conditions subject to which the Supreme Court advocates may practise before the High Courts. The Act we are considering does not confer any power on the High Courts to frame rules subject to which the Supreme Court advocates shall exercise in the High Court their newly acquired statutory right under this Act. The Bar Councils' rule-making power under section 15 is limited only to High Court advocates, clause (b) having been superseded by section 2 of this Act. There is, therefore, no provision of law except section 2 itself which will enable the High Courts to prescribe any rules of conduct for the Supreme Court advocates or to oblige them to conform to any rule of practice when they go to practise in any High Court. Therefore, if we accept either of the two constructions suggested by me it will prevent this absurd and undesirable result, for then the Supreme Court advocates when they go to practise in any High Court will appear and plead or, alternatively, do what an advocate of the High Court can do, and in either case be subject to the relevant rules by which the advocates of the particular High Court are bound. If that were not the meaning of section 2, then the Supreme Court advocates will be untrammelled by any rule of practice at all. Further, on the petitioners' construction, even if the High Courts have power to make rules with regard to Supreme Court advocates practising before them, any the least obligation or restriction imposed by such rules on the Supreme Court advocates by way of making them personally liable for any fees etc., or bringing them under the disciplinary jurisdiction of the High Courts will certainly be

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challenged as a fetter placed on their statutory right to practise in the High Court and as such not binding on them. Finally, there will be two sets of rules, namely, the existing rules governing the attorneys who act on the Original Side and some new rules to be made for the Supreme Court advocates who may choose to act on the Original Side. The resulting creation of a new and distinct class of actors in the Original Sides of the two High Courts will indeed be a sad commentary on the supposed intention of the Legislature to achieve uniformity and unification of the Indian Bar. The petitioners' construction must, therefore, be rejected.

It is next said that on this alternative construction the rights of a Supreme Court advocate will vary from High Court to High Court and that will not be consistent with the policy of uniformity underlying the Act. In the first place it is an assumption, without any warrant, that the Act was out to achieve perfect symmetry and uniformity of the kind which we may consider desirable. Secondly, no serious inconvenience will follow if the rights of a Supreme Court advocate vary from High Court to High Court. The status and rights of advocates of different High Courts do vary under their respective rules and such variation has existed for long time without any inconvenience. This Act does not at all purport to eliminate those differences amongst the advocates of the different High Courts which will yet continue. The construction sought to be put on the section by the petitioner Aswini Kumar Ghosh will, therefore, only create fresh differences by bringing into being a new variety of practitioners who will have yet different rights in all the High Courts. On the other hand, the construction suggested above will cause the least possible inconvenience and at the same time remedy the long-standing grievance of advocates of High Courts on account of the bar against their "appearing and pleading" in High Courts of which they are not advocates by authorising them, after being enrolled as Supreme Court advocates to do so as of right and

without the necessity of their obtaining the sanction of the Chief Justices of the High Courts concerned. The Act permits a well defined body of professional men, namely, the Supreme Court advocates, to exercise the profession of an advocate in any High Court. That this certainly was a forward step in achieving uniformity cannot possibly be denied. Nothing more was within the purview of the Act as expressed in its full title and the *non-obstante* clause.

Finally, reference is made to the proviso as it now appears in section 2 and it is claimed that the word "practise" in the operative part of the section must mean "appear, act and plead" because that word as appearing in the proviso obviously has that meaning, and reliance is placed on the rule of construction that the same word should be given the same meaning wherever it occurs in the Act. All that this proviso says is that nothing in this section shall be deemed to entitle a post-Constitution Judge who might be an advocate of the Supreme Court to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise there after ceasing to hold office as such Judge. In other words, all that the proviso does is to say that the right created by the section shall not extend to a Judge if he had given an undertaking not to practise in that Court. In the first place this proviso was wholly redundant in view of the constitutional prohibition contained in article 220. Further, the language of the proviso is inept in that it seems to suggest that if such a Judge had not given an undertaking he would be free to practise which certainly is contrary to article 220. Finally, there is no difficulty in giving to the word "practise" occurring in the proviso the same general meaning given to that word in the operative part of the section, namely, "to exercise the profession". It is said that if the words "to practise" mean only "to plead", then a post-Constitution Judge after his retirement would be entitled "to act" in the High Court of which he was at any time a Judge. There is no force in this argument because such a Judge

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will be prevented from acting and pleading anywhere by virtue of the provisions of article 220 of the Constitution. It is, therefore, not necessary to give the word "practise" the wider meaning contended for by the petitioner Aswini Kumar Ghosh. We must also remember that the general rule relied upon may be excluded by the subject or context.

For reasons stated above, whether we adopt one or the other method of construction suggested above, in my opinion, this petition cannot succeed and must be dismissed.

Appeal allowed.

Agent for the respondents: *P. K. Bose.*

Agent for Intervener No. 1: *P. K. Mukherjee.*

Agent for Intervener No. 2: *Sukumar Ghose.*

Agent for Intervener No. 3: *I. N. Shroff*, for *P. K. Bose.*

Agent for Intervener No 4: *Rajinder Narain.*

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Oct. 22.

PALVINDER KAUR

v.

THE STATE OF PUNJAB

(RUP SINGH—Caveator)

[MEHR CHAND MAHAJAN, CHANDRASEKHARA AIYAR and BHAGWATI JJ.]

Criminal trial—Circumstantial evidence—Duty of courts to safeguard themselves against basing decision on suspicions—Confession—Must be accepted or rejected as a whole—Self exculpatory statement containing admission of incriminating facts—Admission of incriminating portion as true rejecting exculpatory portion as false—Legality—Indian Penal Code, 1860, s. 201—Essential ingredients of offence.

In cases depending on circumstantial evidence courts should safeguard themselves against the danger of basing their conclusions on suspicions howsoever strong.

Rex v. *Hodge* (1838) 2 Lew. 227, and *Nargundkar* v. *State of Madhya Pradesh* [1952] S.C.R. 1091 referred to.