1960

December 5.

RAMESHWAR DAYAL

v.

THE STATE OF PUNJAB AND OTHERS

(B. P. SINHA, C. J., S. K. DAS, K. C. DAS GUPTA, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

District Judges—Eligibility for appointment—Appointment under the Constitution—Qualifications—Period of practice as Advocate, if includes period of practice in Lahore High Court—High Courts (Punjab) Order, 1947, cl. 6—Bar Councils Act, 1926 (38 of 1926), s. 8—Constitution of India, Art. 233(2).

The validity of the appointment of respondents 2 to 6 as District Judges was challenged in a petition filed by the appellant under Art. 226 of the Constitution of India before the High Court of Punjab, on the ground, inter alia, that the appointment was made in contravention of Art. 233(2) of the Constitution of India which lays down that "a person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader..." The respondents had been enrolled as advocates of the Lahore High Court on various dates between 1933 and 1940, and while respondents 2, 4 and 5 had their names on the roll of advocates of the Punjab High Court and were practising as advocates at the time they were appointed as District Judges in 1950 and 1952, respondents 3 and 6 did not have their names factually on the roll when they were appointed as District Judges in 1957 and 1958. Respondent 6 had his name so enrolled after his appointment.

Under a notification dated September 28, 1948, ss. 3 to 16 of the Bar Councils Act, 1926, came into force in respect of the East Punjab High Court, by virtue of which a Bar Council was constituted and a roll of advocates had to be prepared and maintained by the High Court in accordance with s. 8 of the Act. The proviso to sub-s. (2) of s. 8 of the Act required them to deposit a fee of Rs. 10 payable to the Bar Council. The appellant's contention was that after the partition of the country, which led to the establishment of a separate High Court for the province of East Punjab the Punjab High Court was established only on August 15, 1947, under the High Courts (Punjab) Order, 1947, and as the respondents did not have seven years' standing as advocates with reference to their right of practice in a court in India after that date, they did not fulfil the requirements of Art. 233(2) when they were appointed as District Judges and, therefore, their appointments were constitutionally invalid. The question was whether the period of seven years referred to in Art. 233(2) must be counted as the

standing of the advocate or pleader with reference to his right of practice in a court in the territory of India as defined in Art. 1 of the Constitution, or whether any right of practice in a court which was in India before the partition of the country in 1947 but which was not in India since partition, could also be taken into consideration for the purpose of counting the period of seven years.

Held, that under cl. (6) of the High Courts (Punjab) Order, 1947, read with s. 8(3) of the Bar Councils Act, 1926, an advocate of the Punjab High Court was entitled to count the period of his practice in the Lahore High Court for determining his standing at the Bar. Accordingly as respondents 2, 4 and 5 continued to be advocates of the Punjab High Court when they were appointed as District Judges and had a standing of more than seven years when so appointed, they fulfilled the requirements of Art. 233(2) of the Constitution.

Held, further, that the effect of cl. (6) of the High Courts (Punjab) Order, 1947, and s. 8(2)(a) of the Bar Councils Act, 1926, was that from August 15, 1947, to September 28, 1948, advocates who had been enrolled as advocates of the Lahore High Court were recognised as advocates entitled to practice in the Punjab High Court, and after September 28, 1948, they automatically came on the roll of advocates of the Punjab High Court, but had to pay a fee of Rs. 10 to the Bar Council. Consequently, respondents 3 and 6 who did not cease to be advocates at any time or stage after August 15, 1947, continued to be advocates of the Punjab High Court till they were appointed as District Judges and had the necessary standing of seven years to be eligible under Art. 233(2) of the Constitution.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 438 of 1960.

Appeal by special leave from the judgment dated September 21, 1959, of the Punjab High Court, Chandigarh, in Civil Writ No. 1050 of 1959.

A. S. R. Chari, M. S. K. Sastri and *K. L. Mehta*, for the appellant.

S. M. Sikri, Advocate General for the Punjab, N. S. Bindra, K. L. Arora and *D. Gupta*, for the respondent No. 1.

Gurbachan Singh, Tirth Singh Munjral and *R. H. Dhebar*, for respondents Nos. 2, 3 and 5.

A. V. Viswanatha Sastri, R. Ganapathy Iyer and *D. Gupta*, for respondents Nos. 4 and 6.

H. N. Sanyal, Additional Solicitor-General of India, and *D. Gupta*, for the Intervener (Union of India).

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M. K. Nambiyar, M. S. K. Sastri and *K. L. Mehta*, for the Interveners (Om Dutt Sharma and B. D. Pathak).

1960. December 5. The Judgment of the Court was delivered by

S. K. DAS, J.—This is an appeal by special leave from an order of the High Court of Punjab dated September 21, 1959, by which it summarily dismissed a petition made by the present appellant under Art. 226 of the Constitution for certain reliefs in respect of five persons, two of whom are now working as Additional Judges of the Punjab High Court, the third as Officiating Judge of the same Court, the fourth as District and Sessions Judge, Delhi, and the fifth as Registrar, Punjab High Court, Chandigarh. Shorn of details which are not material, the case of the appellant was and is that the aforesaid five persons, now respondents 2 to 6 before us, were not qualified to be appointed as District Judges under Art. 233 of the Constitution at the time when they were so appointed by the State Government, now respondent 1 before us, and, therefore, their appointment as such was constitutionally invalid; and the appellant claimed by way of his main relief that a writ in the nature of a writ of *quo warranto* should issue "ousting them from their office and restraining them from exercising the powers, duties and functions of the posts they are holding and from claiming any rights, privileges or emoluments attached to their office." Certain other subsidiary or ancillary reliefs were also claimed details whereof need not now be stated. We have stated that the petition was summarily dismissed by the High Court. An application for a certificate of fitness having failed in the High Court, the appellant asked for and obtained special leave from this Court on August 19, 1960.

The appeal has been contested by the State of Punjab, respondent 1, and the other respondents of whom Shamsher Bahadur, Harbans Singh and Gurdev Singh are Justices of the Punjab High Court, Hans Raj Khanna is District and Sessions Judge, Delhi,

and P. R. Sawhney is Registrar of the High Court. These respondents have filed separate affidavits in reply, and some of them have been separately represented and heard. The Advocate-General of Punjab has appeared and contested the appeal on behalf of respondent 1. The Union of India was originally a party-respondent to the petition inasmuch as the appellant had initially impugned the appointment of two of the respondents as High Court Judges; this relief was, however, given up during the pendency of the special leave petition and on an application made by the appellant, the name of the Union of India was struck off by an order dated March 18, 1960, leaving the matter in dispute limited to the question of the validity of the initial appointment of respondents 2 to 6 as District Judges only. Later, the Union of India made an application to intervene in the appeal and in view of the circumstance that a question of the interpretation of Art. 233 of Constitution arises in the appeal, we have allowed the application and heard the learned Additional Solicitor-General, even though the Union of India did not appear at an earlier stage to contest the application which the appellant had made, to expunge it from the category of respondents.

The other persons B. D. Pathak and Om Dutt Sharma had also filed a writ petition in the Punjab High Court challenging the legality of the appointment of P. R. Sawhney who, it appears, had acquitted certain persons in three criminal appeals decided by him on January 22, 1959, as Additional District and Sessions Judge, Delhi, from the decision of a magistrate of Delhi in a case in which B. D. Pathak and Om Dutt Sharma said that they had been assaulted by the persons accused in the case. They filed three revision petitions in respect of the orders passed, which are pending in the High Court. In view of these circumstances they have also been allowed to intervene in the present appeal in so far as it relates to the appointment of P. R. Sawhney, and we have heard learned Counsel on their behalf.

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On behalf of the respondents who are no longer working as District Judges a preliminary objection has been taken to the maintainability of the appeal. It has been contended that the appeal is now limited to the question of their appointment as District Judges and as they are no longer holding the office of District Judge, the prayer for the issue of a writ of *quo warranto* in respect of that office is no longer maintainable. On behalf of the appellant it has been submitted in reply that respondents 2 to 4 are not permanent Judges of the High Court so that if and when they revert, they must go back to their substantive posts of District Judges; therefore, the question whether they were validly appointed to their substantive posts is a live issue and the appellant is entitled to ask this Court to pronounce on that issue. The learned Advocate-General has submitted that the State is anxious to have the decision of this Court on the legality of the appointments made in order to avoid future trouble and the State does not wish to raise any preliminary objection to the determination of the question in issue. On a careful consideration of the matter, we have come to the conclusion that the preliminary objection must be overruled and in the circumstances of this case, this Court must decide on the legality of the impugned appointments.

It would facilitate appreciation of the points in controversy if we state first, in broad outline, the circumstances in which respondents 2 to 6 were appointed as District Judges.

(1) Respondent 2 (Shamshere Bahadur, J.) was called to the Bar in England on January 26, 1933, by the Middle Temple. He was enrolled as an Advocate of the Lahore High Court on May 15, 1933, and practised as such in that Court. On February 9, 1949, he was enrolled as an Advocate of the Federal Court of India. On and after August 15, 1947, he practised as an Advocate of the East Punjab High Court till he was appointed as District and Sessions Judge on March 20, 1950. Then he functioned as Legal Remembrancer of the State Government from December 1953 to May 1959, when he was appointed as an Additional Judge of the Punjab High Court.

(2) Respondent 3 (Harbans Singh, J.) was also called to the Bar and then enrolled as an Advocate of the Lahore High Court on March 5, 1937. He worked as an Additional District and Sessions Judge, Ferozepore, from July 2, 1947, to February 22, 1948. He then returned to practice at Simla for a short while. On March 15, 1948, he worked as Deputy Custodian, Evacuee Property, till April 17, 1950. On April 18, 1950, he was appointed as District and Sessions Judge and on August 11, 1958, he was appointed as an Additional Judge of the Punjab High Court.

(3) Respondent 4 (Gurdev Singh, J.) was enrolled as a Pleader of the Lahore High Court on October 25, 1934, and then as an Advocate of the said Court on December 20, 1938. He was enrolled as an Advocate of the Federal Court of India on May 29, 1948, and was continuously in practice till he was appointed as District and Sessions Judge on February 2, 1952. On July 11, 1960, he was appointed to officiate as a Judge of the Punjab High Court.

(4) Respondent 5 (Hans Raj Khanna) was enrolled as a Pleader of the Lahore High Court on July 17, 1934, and then enrolled as an Advocate of the said Court on December 20, 1940. He started his practice as a lawyer at Amritsar and he continued his practice there till his appointment as District and Sessions Judge. His name was borne on the Roll of Advocates prepared by the East Punjab High Court when he was appointed as District and Sessions Judge on February 1, 1952.

(5) Respondent 6 (P. R. Sawhney) was called to the Bar on November 17, 1930, and was enrolled as an Advocate of the Lahore High Court on March 10, 1931. After partition he shifted to Delhi and worked for sometime as Legal Adviser to the Custodian, Evacuee Property, Delhi. Then he practised for sometime at Delhi; he then accepted service under the Ministry of Rehabilitation as an Officer on Special Duty and Administrator, Rajpura Township. On March 30, 1949, he became the Chairman, Jullundur Improvement Trust. On May 6, 1949, he got his licence to practise as an Advocate suspended. On

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April 6, 1957, he was appointed as District and Sessions Judge.

It would thus appear that of the five respondents mentioned above, three, namely, Shamshere Bahadur, Gurudev Singh and Hans Raj Khanna had their names on the Roll of Advocates of the Punjab High Court before they were appointed as District Judges. In other words, they were practising as Advocates at the time they were so appointed. Two of them, Harbans Singh and P. R. Sawhney, did not have their names factually on the Roll when they were appointed as District Judges. P. R. Sawhney, it appears, had his name so enrolled on October 20, 1959, that is, after his appointment as District Judge. We are inviting attention to this distinction amongst the respondents at this stage, because as will appear later this distinction has some bearing on one of the arguments made before us on behalf of the appellant.

We proceed now to a consideration of the main contention urged on behalf of the appellant, namely, that the appointment of respondents 2 to 6 as District Judges was made in contravention of the provisions of Art. 233 of the Constitution. It is convenient to read here Art. 233 of the Constitution:

"Art. 233(1). Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

Now, the argument of learned Counsel for the appellant has ranged over a wide field; but the point for decision is a narrow one and depends on whether respondents 2 to 6 fulfilled the requirements of cl. (2) of Art. 233 of the Constitution when they were appointed as District Judges by respondent 1. That clause lays down that a person not already in the service of the Union or of the State shall only be eligible to be

appointed a district judge if (1) he has been for not less than seven years an advocate or a pleader and (2) is recommended by the High Court for appointment. As to the second requirement no question arises here, because admittedly respondents 2 to 6 were recommended by the High Court before their appointment. The dispute is with regard to the first requirement. Learned Counsel for the appellant has contended that respondents 2 to 6 did not fulfil the requirement of having been "seven years an advocate or pleader" and has put his argument in support of his contention in the following way. Firstly, he has submitted that the expression "advocate or pleader" is an expression of legal import and must be given its generally accepted meaning at the time the Constitution was adopted; and that expression according to learned Counsel means an advocate or pleader entitled to appear and plead for another in a Court in India, but does not include an advocate or pleader of a foreign Court; for this submission he has relied on the definition of the expression "legal practitioners" in the Legal Practitioners Act, 1879 (XVIII of 1879); of "pleader" in the Civil Procedure Code, 1908 (Act V of 1908); and of "advocate" in the Bar Councils Act, 1926 (XXXVIII of 1926). Secondly, he has submitted that by reason of the use of the present perfect tense "has been" in cl. (2) of Art. 233, the rules of grammar require that the person eligible for appointment must not only have been an advocate or pleader before but must be an advocate or pleader at the time he is appointed to the office of District Judge. Thirdly, he has submitted that the period of seven years referred to in the clause must be counted as the standing of the advocate or pleader with reference to his right of practice in a Court in the territory of India as defined in Art. 1 of the Constitution; in other words, any right of practice in a Court which was in India before the partition of the country in 1947 but which is not in India since partition, cannot be taken into consideration for the purpose of counting the period of seven years.

We shall presently consider these submissions in so

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far as they bear on the problem before us. But before we do so, it is necessary to explain the changes which took place after the partition of the country and led to the establishment of a High Court of Judicature for the province of East Punjab (now called the Punjab High Court for the State of Punjab) and how those changes affected the position of advocates or pleaders who had the right to practice in the Lahore High Court of undivided Punjab. The Independence Act, 1947, brought into existence two independent Dominions—India and Pakistan—and s. 9 thereof gave the Governor-General power to make orders *inter alia* for bringing the provisions of the Act into effective operation. In exercise of that power the Governor-General made the High Courts (Punjab) Order, 1947, which established as from the appointed day (August 15, 1947) a High Court of Judicature for the then Province of East Punjab. Clause 6 of the Order is important and must be quoted in full:

"6(1) The High Court of East Punjab shall have the like powers to approve, admit, enrol, remove and suspend advocates, vakils and attorneys, and to make rules with respect to advocates, vakils and attorneys as are, under the law in force immediately before the appointed day, exercisable by the High Court at Lahore.

(2) The right of audience in the High Court of East Punjab shall be regulated in accordance with the like principles as, immediately before the appointed day, are in force with respect to the right of audience in the High Court at Lahore:

Provided that, subject to any rule made or direction given by the High Court of East Punjab in the exercise of the powers conferred by this Article, any person who, immediately before the appointed day, is an advocate, vakil or attorney entitled to practise in the High Court at Lahore shall be recognised as an advocate, vakil or attorney entitled to practise in the High Court of East Punjab."

It is also necessary to notice cl. 14 of the Order which states *inter alia* that "the provisions of this Order shall have effect subject to any provision made on or

after the appointed day with respect to.....the High Court of East Punjab by any legislature or other authority having power to make such provision." The points which we must emphasise here are (1) that under cl. 6(2) the seniority of advocates in the new High Court as to their right of audience was to be regulated by the principle in force in the former High Court and (2) that under the proviso to cl. 6 any person who before August 15, 1947, was an advocate entitled to practise in the Lahore High Court was recognised as an advocate entitled to practise in the High Court of East Punjab, subject to any rule made or direction given by the High Court or any provision made by the legislature or other authority having power to make such provision. The Bar Councils Act, 1926, except for ss. 1, 2, 17, 18 and 19 did not then apply to the High Court of East Punjab. By a notification dated September 28, 1948, the Governor of East Punjab directed that the provisions of ss. 3 to 16 of the said Act shall come into force in respect of the East Punjab High Court with effect from that date. Section 3 of the Act says that for every High Court a Bar Council shall be constituted in the manner provided by the provisions of the Act. Section 8 of the Act says (We are reading such portion only as is relevant for our purpose):—

"S. 8(1) 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.

(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; and

(b) all other persons who have been admitted to be advocates of the High Court under this Act:

Provided that such persons shall have paid in

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respect of enrolment the stamp duty, if any, chargeable under the Indian Stamp Act, 1899, and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a), and in other cases such amount as may be prescribed.

(3) Entries in the roll shall be made in the order of seniority and such seniority shall be determined as follows, namely:—

(a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority *inter se* immediately before the date on which this section comes into force in respect of the High Court; and

(b) the seniority of any other person admitted to be an advocate of the High Court under this Act after that date shall be determined by the date of his admission or, if he is a barrister, by the date of his admission or the date on which he was called to the Bar, whichever date is earlier:

Provided that, for the purposes of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled.

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority."

It is not very clear from the record before us when the Bar Council was actually constituted for the Punjab High Court, but it was stated at the Bar that the first election took place in 1950. But on January 13, 1949, the High Court made certain rules under ss. 6 and 12 of the Act. Rule 2(1) of the said rules was in these terms:

"Rule 2(1). The Registrar shall classify the advocates entered in the roll prepared under section 8, sub-section (2), of the Indian Bar Councils Act as follows:—

(a) those who have or who on or before the date of election of the members of the Bar Council of the High Court will have, for not less than 10 years, been entitled as of right to practise in the High Court;

(b) those who other than those mentioned in clause (a) are or who on or before the date of the election of members of the Bar Council of the High Court may become entitled to practise in the High Court."

We have, therefore, two distinct periods to keep in mind. The first period is between August 15, 1947, to September 27, 1948, when the main provisions of the Bar Councils Act, 1926, were not in force for the Punjab High Court and the right of advocates was regulated by the High Courts (Punjab) Order, 1947. The second period was from September 28, 1948, when the main provisions of the Bar Councils Act were brought into force, rules were made thereunder, a Bar Council was constituted and a roll of Advocates was prepared and maintained in accordance with s. 8 of the said Act. It was in this second period that the Constitution of India came into force on January 26, 1950.

This is the background against which we have to consider the argument of learned Counsel for the appellant. Even if we assume without finally pronouncing on their correctness that learned Counsel is right in his first two submissions, viz., that the word "advocate" in cl. (2) of Art. 233 means an advocate of a Court in India and the appointee must be such an advocate at the time of his appointment, no objection on those grounds can be raised to the appointment of three of the respondents who were factually on the roll of Advocates of the Punjab High Court at the time of their appointment; because admittedly they were advocates in a Court in India and continued as such advocates till the dates of their appointment. The only question with regard to them is whether they can count in the period of seven years their period of practice in or under the Lahore High Court. The answer to this question is clearly furnished by cl. 6(2) of the High Courts (Punjab) Order, 1947, read with s. 8(3) of the Bar Councils Act, 1926. That clause lays down that the right of audience in the High Court of East Punjab shall be regulated in

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accordance with the principle in force in the Lahore High Court immediately before the appointed day. The relevant rule in the Lahore High Court Rules laid down that Advocates who are Barristers shall take precedence inter se according to the date of call to the Bar; Advocates who are not Barristers, according to the dates when they became entitled to practice in a High Court. The same principle applied to the East Punjab High Court, and an advocate of the Lahore High Court who was recognised as an advocate entitled to practise in the new High Court counted his seniority on the strength of his standing in the Lahore High Court. He did not lose that seniority, which was preserved by the Bar Councils Act, 1926, and we see no reasons why for the purpose of cl. (2) of Art. 233 such an advocate should not have the same standing as he has in the High Court where he is practising.

Learned Counsel for the appellant has also drawn our attention to Explanation I to cl. (3) of Art. 124 of the Constitution relating to the qualifications for appointment as a Judge of the Supreme Court and to the Explanation to cl. (2) of Art. 217 relating to the qualifications for appointment as a Judge of a High Court, and has submitted that where the Constitution-makers thought it necessary they specifically provided for counting the period in a High Court which was formerly in India. Articles 124 and 217 are differently worded and refer to an additional qualification of citizenship which is not a requirement of Art. 233, and we do not think that cl. (2) of Art. 233 can be interpreted in the light of Explanations added to Arts. 124 and 217. Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under cl. (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing. The

clause does not say how that standing must be reckoned and if an Advocate of the Punjab High Court is entitled to count the period of his practice in the Lahore High Court for determining his standing at the Bar, we see nothing in Art. 233 which must lead to the exclusion of that period for determining his eligibility for appointment as district judge.

What will be the result if the interpretation canvassed for on behalf of the appellant is accepted? Then, for seven years beginning from August 15, 1947, no member of the Bar of the Punjab High Court would be eligible for appointment as district judge—a result which has only to be stated to demonstrate the weakness of the argument. We have proceeded so far on the first two submissions of learned Counsel for the appellant, and on that basis dealt with his third submission. It is perhaps necessary to add that we must not be understood to have decided that the expression 'has been' must always mean what learned Counsel for the appellant says it means according to the strict rules of grammar. It may be seriously questioned if an organic Constitution must be so narrowly interpreted, and the learned Additional Solicitor-General has drawn our attention to other Articles of the Constitution like Art. 5(c) where in the context the expression has a different meaning. Our attention has also been drawn to the decision of the Allahabad High Court in *Mubarak Mazdoor* v. *K. K. Banerji* (1) where a different meaning was given to a similar expression occurring in the proviso to sub-s. (3) of s. 86 of the Representation of the People Act, 1951. We consider it unnecessary to pursue this matter further because the respondents we are now considering continued to be advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed. They were clearly eligible for appointment under cl. 2 of Art. 233 of the Constitution.

We now turn to the other two respondents (Harbans Singh and P. R. Sawhney) whose names were not

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factually on the roll of Advocates at the time they were appointed as district judges. What is their position? We consider that they also fulfilled the requirements of Art. 233 of the Constitution. Harbans Singh was in service of the State at the time of his appointment, and Mr. Viswanatha Sastri appearing for him has submitted that cl. (2) of Art. 233 did not apply. We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of cl. (2), we must hold that they fulfilled those requirements. They were Advocates enrolled in the Lahore High Court; this is not disputed. Under cl. 6 of the High Courts (Punjab) Order, 1947, they were recognised as Advocates entitled to practise in the Punjab High Court till the Bar Councils Act, 1926, came into force. Under s. 8 (2)(a) of that Act it was the duty of the High Court to prepare and maintain a roll of advocates in which their names should have been entered on the day on which s. 8 came into force, that is, on September 28, 1948. The proviso to sub-s. (2) of s. 8 required them to deposit a fee of Rs. 10 payable to the Bar Council. Obviously such payment could hardly be made before the Bar Council was constituted. We do not agree with learned Counsel for the appellant and the interveners (B. D. Pathak and Om Dutt Sharma) that the proviso had the effect of taking away the right which these respondents had to come automatically on the roll of advocates under s. 8(2)(a) of the Act. We consider that the combined effect of cl. 6 of the High Courts (Punjab) Order, 1947, and s. 8(2)(a) of the Bar Councils Act, 1926, was this: from August 15, 1947, to September 28, 1948, they were recognised as Advocates entitled to practise in the Punjab High Court and after September 28, 1948, they automatically came on the roll of advocates of the Punjab High Court but had to pay a fee of Rs. 10 to the Bar Council. They did not cease to be advocates at any time or stage after August 15, 1947, and they continued to be advocates of the Punjab High Court till they were appointed as District Judges. They also had the

necessary standing of seven years to be eligible under cl. (2) of Art. 233 of the Constitution.

These conclusions really dispose of the appeal. We may state, however, that an alternative argument based on s. 4 of the Legal Practitioners Act, 1879, was also presented before us on behalf of these respondents. The argument was that the respondents having been enrolled as advocates in the Lahore High Court were entitled to practise in any subordinate Court in India, and that right was not taken away even after the Lahore High Court ceased to be a High Court in the territory of India under the Constitution. As we are resting our decision on conclusions drawn from the High Courts (Punjab) Order, 1947, and s. 8 of the Bar Councils Act, 1926, we consider it unnecessary to examine the alternative argument based on s. 4 of the Legal Practitioners Act, 1879.

The appellant had devoted a large part of his writ petition to support a contention that the appointment of the respondent was bad, because it contravened certain statutory service Rules. It was stated by the appellant that in the Punjab the judicial branch of superior appointments consisted of 27 posts inclusive of eight listed posts; two out of these eight listed posts were reserved for the members of the Bar and six for members of the subordinate judicial service. On the partition of the Province, it was stated, eleven superior judicial posts were allotted to East Punjab, and the number was later increased to twelve. Out of these twelve posts, the appellant contended, one-third was reserved for the members of the Bar, one-third for what was called the Provincial Civil Service (Judicial Branch) and the rest for recruitment from either of the aforesaid two sources on merit. The grievance of the appellant is that too many persons have been recruited from the Bar to the detriment of the members of the service to which the appellant belongs.

We asked learned Counsel for the appellant to point out to us any particular statutory rule which has been contravened by respondent 1 in making the appointments. Learned Counsel was unable to point

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out any such statutory rule and except making a general grievance that too many persons have been recruited from the Bar, he was unable even to substantiate that the one-third reservation made in favour of the service members has been violated. In any case, unless there is clear proof of a breach of a statutory rule in making any of the appointments under consideration here, the point does not merit any discussion. Such proof is singularly lacking in this case.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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THE STATE OF BOMBAY

(JAFER IMAM, K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Criminal Trial—Commitment—If can be made without recording any evidence—Duty of Committing Court—Code of Criminal Procedure, 1898 (V of 1898), s. 207-A.

On the date fixed for the inquiry the prosecution intimated to the Magistrate that it did not intend to examine any witness in the Magistrate's Court. The Magistrate adjourned the inquiry to consider whether it was necessary to record any evidence before commitment. On the adjourned date he expressed his opinion that no witnesses need be examined, framed charges against the appellants and committed them to the Sessions Court. The appellants contended that the Magistrate had no jurisdiction to commit them to Sessions without examining witnesses under sub-s. (4) of s. 207-A of the Code of Criminal Procedure.

Held, that the order of commitment was valid and the Magistrate had jurisdiction to make it without recording any evidence. The position under s. 207-A of the Code is that:—

(i) the Magistrate is bound to take evidence of only such eye-witnesses as are actually produced by the prosecution before the Committing Court;