

of the Subordinate Judge and decree the claim in full with costs.

I would dismiss the four appeals by the defendants with costs.

Ross, J.—I agree.

*Appeal nos. 53, 54, 119 and 136 dismissed.*

*Appeal no. 70 allowed.*

1930.

TEAKUR

PRASAD

v.

MUSAMMAT

DIPA KUER.

DHAVLE, J.

### PRIVY COUNCIL.

PRAFULLA RANJAN DAS

v.

1930.

Dec., 2.

CHIEF JUSTICE AND JUDGES OF THE HIGH COURT  
OF JUDICATURE AT PATNA.

ON APPEAL FROM THE HIGH COURT AT PATNA.\*

*Legal Practitioner—Roll of Advocates—Right to Practise—Order Enrolling but excluding from Practice—Indian Bar Councils Act, 1926 (XXXVIII of 1926), ss. 8 and 14.*

An advocate whose name has been entered in the roll of advocates prepared by a High Court under s. 8(2) of the Indian Bar Councils Act, 1926, has a statutory right under s. 14(1) to practise in the High Court (subject by s. 9(4) to a limitation as to the High Courts at Calcutta and Bombay). Consequently so much of an order of the Patna High Court enrolling the appellant as purported to exclude him from practice in the Courts of the Province was invalid.

*Quere*: Whether an enrolled advocate who becomes a judge thereupon ceases to hold the qualification of an advocate.

Order of the High Court varied.

Appeal (no. 77 of 1930) by special leave from so much of an order of the High Court, dated March 29, 1930, as refused to allow the appellant to appear in the Courts of Bihar and Orissa over which the High Court had jurisdiction.

The facts of the case appear from the judgment of the Judicial Committee.

\* *Present*: Lord Atkin, Lord Russell of Killowen, and Sir John Wallis.

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PRAFULLA  
 RANJAN DAS  
 v.  
 CHIEF  
 JUSTICE AND  
 JUDGES OF  
 THE HIGH  
 COURT OF  
 JUDICATURE  
 AT PATNA.

Special leave to appeal was granted on July 18, 1930.

*Upjohn, K. C., Parikh and Dube*, for the appellant.

*Dunne, K. C. and Wallach*, for the respondents.

The respective arguments, and the material terms of the Indian Bar Councils Act, 1926, are stated in the judgment.

At the conclusion of the arguments their Lordships stated that they would humbly advise His Majesty to allow the appeal, and that their reasons would be stated later.

The report of their Lordships was delivered by—

LORD ATKIN.—This is an appeal from so much of an order of the High Court of Judicature at Patna as refused to allow the appellant, as advocate, to appear in the Courts of the province of Bihar and Orissa. The appellant in 1905 was called to the English Bar by the Hon. Society of the Middle Temple. In 1906 he was admitted as an advocate of the High Court at Fort William in Bengal. On the establishment of the High Court at Patna he caused his name to be removed from the roll of advocates of the High Court in Calcutta, and was enrolled as an advocate of the High Court at Patna. He practised as an advocate, and in February, 1919, was appointed a Judge of that High Court. His name remained on the roll of advocates. In February, 1930, he retired from his office as Judge on medical grounds, on a pension. Meantime, in 1926, had been passed the Indian Bar Councils Act, which provides that the High Court shall prepare and maintain a roll of advocates of the High Court, and that no person shall be entitled as of right to practise in any High Court unless his name was entered in such roll. Immediately after his retirement the appellant applied to the High Court to have his name entered on the roll of advocates. It was at first refused, but on a renewed application

in which the appellant was represented by counsel the Judges on the 29th March made the following order:—

“ That although in the opinion of a majority of the Judges Mr. P. R. Das is entitled to be enrolled as an advocate under section 8 (2) (a) of the Indian Bar Councils Act, yet in view of the fact that he was a permanent Judge of this Court the Judges refuse to allow him to appear in the Courts of this Province.”

On the 5th April the name of the appellant was enrolled on the roll of advocates, and on the same day the High Court issued to the appellant a formal certificate under this Act, certifying that Mr. P. R. Das, Barrister-at-law, has this day been enrolled as an advocate of this Court under section 8 (2) (a) of the Indian Bar Councils Act, 1926.

In these circumstances the appellant contends that he is entitled by statutory right to practise in the Courts of the province under the provisions of the Indian Bar Councils Act, 1926. By section 2

“ Advocate means an advocate entered in the Roll of Advocates of a High Court under the provisions of this Act.”  
By section 14

“ An Advocate shall be entitled as of right to practise (a) subject to the provisions of sub-section 4 of section 9 ”

[which are irrelevant for this purpose]

“ in the High Court of which he is an Advocate.”

The appellant is undoubtedly entered on the roll of advocates; he is, therefore, he contends, an advocate who has the right given under section 14. This reasoning appears to their Lordships irresistible.

The only method of meeting the argument which could be suggested by counsel for the respondents was the contention that the High Court was wrong in deciding that the appellant was entitled to be enrolled under section 8 (2) (a) of the Act. By section 8, sub-section (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

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before the date on which this section comes into force in respect thereof, and

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(b) All other persons who have been admitted to be Advocates of the High Court under this Act."

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It was not suggested that the appellant came under (b), and the contention is that as immediately before the Act came into force he was a Judge he was not a person who, as advocate, was entitled as of right to practise in the High Court at that date. Their Lordships do not propose to pronounce any opinion upon this contention, for in the present proceedings it does not appear to be open to the respondents. The contention obviously raises questions of importance as to the position of advocate and Judge in India, whether a Judge on appointment ceases to hold the qualification of advocate, and if so how, if at all, on ceasing to be a Judge he may resume the position of an advocate. The High Court at Patna resolved the question in favour of the appellant; their reasons are not before the Board; no cross-appeal is brought from this decision, and their Lordships in the circumstances feel bound to accept the enrolment as an accomplished fact on the basis of which the rights of the appellant must be determined. No question arises in this case as to the exercise of any discretion by the High Court, for the appellant relies upon, and in their Lordships' view has established, a statutory right to practise. Their Lordships therefore refrain from expressing any opinion upon the important question as to the propriety of an ex-Judge practising in the Courts of the province where he has exercised judicial functions. Their Lordships at the hearing intimated that they would humbly advise His Majesty to set aside so much of the order of the 29th March, 1930, as refused to allow the appellant to appear in the Courts of the Province, and that they would thereafter set out their reasons as they have now done. There will be no order as to the costs of this appeal.

Solicitors for appellant: *Watkins and Hunters.*

Solicitors for respondent: *Solicitor, India Office.*