FULL BENCH.

Before Bhandari, C. J., Falshaw and Mehar Singh, JJ.

THE NATIONAL PLANNERS, LIMITED (IN LIQUIDATION), —*Petitioner.*

versus

CONTRIBUTORIES, ETC.,—*Respondents.*

Civil Miscellaneous No. 1094-D of 1956, in Civil Original No. 71 of 1956.

1957

Companies Act (I of 1956)—Sections 10, 647 and 658—Winding up proceedings in respect of companies having share capital of more than a lac of rupees pending in the District Court under the Indian Companies Act, 1913, at the time of coming into force of the Companies Act, 1956—District Court—Whether competent to retain the same or must transfer them to the High Court—Section 10—Whether retrospective—Section 647(ii)—Meaning of—Interpretation of Statutes—Repeal of an enactment—Effect of, on pending actions—Words used in different statutes—Interpretation of —Statute ambiguous—Construction to be favoured.

Held, that it is open to a District Judge in whose Court a winding up poroceeding in respect of a company having share capital of more than a lac of rupees was pending before the Companies Act, 1956, came into force to retain the said proceeding in his Court and to pass judgment thereon in accordance with the provisions of the Indian Companies Act, 1913. It is not necessary under the provisions of the Act of 1956 to transfer the said proceedings to the High Court.

Held, that there is nothing in the language of Section 10 of the Act of 1956, which would impel the Court to hold that the said section was intended to be retrospective.

Held, that having regard to the meaning of the expressions "manner" and "incident" and to the object of section 647 the statutory requirement that "every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed" means that it will be wound up in the same way, in accordance with the

same procedure, and by the same authorities as provided in the Act of 1913. In other words, it means that the company shall be wound up in accordance with the provisions of the Indian Companies Act of 1913, and not in accordance with the provisions of the Act of 1956.

Held, that it is a well settled rule of common law that when an action is brought under a statute which is afterwards repealed, the Court loses jurisdiction of the suit pending under the repealed Act and is unable to deliver judgment therein. The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced; prosecuted and concluded whilst it was an existing law. It follows as corollary that if a statute is unconditionally repealed without a saving clause in favour of pending suits, all actions must stop where the repeal finds them, and if final relief has not been granted before the repeal goes into effect, it cannot be afterwards. A similar, principle applies to a law conferring jurisdiction and whenever a statute from which a court derives its jurisdiction in particular cases is repealed, the Court has no right to proceed under the repealed statute even in suits pending at the time of the repeal, unless the right is expressly saved by the repealing Act or by a general Act regulating repeals.

Held, that it is an accepted principle of law that the same words used in different statutes on the same subject are interpreted to have the same meaning. Indeed, it has been said that if a statutory meaning is attached to certain words in a prior Act, there is a presumption of some force that the Legislature intended that they should have the same signification when used in a subsequent Act in relation to the same subject matter.

Held, that where a statute is ambiguous and susceptible of two constructions, convenience may be taken into consideration in the interpretation thereof. A construction which produces convenient results is favoured while a construction which produces inconvenient results is avoided. In any case the courts must steer clear of a construction which would be unjust, oppressive, unreasonable or absurd.

Case referred by Hon'ble Mr. Justice Gurnam Singh on 20th May, 1957, to a larger Bench for opinion on the legal

point involved in the case and later on decided by a Full Bench consisting of Hon'ble Mr. Chief Justice A. N. Bhandari, Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Mehar Singh on 20th November, 1957.

Case referred by the District and Sessions Judge, Delhi, to the High Court seeking directions as to whether in view of section 10 of the Company's Act, 1956, the District Court has been left with the jurisdiction relating to the winding up of a Company the paid up share capital of which is Rs. 100,000 or more than Rs. 100,000.

HARDIT SINGH, in person.

I. D. DUA and P. C. KHANNA, for Respondent.

ORDER

Bhandari, C. J.

BHANDARI, C. J.—This reference to the Full Bench raises the question whether the repeal of the Indian Companies Act, 1913, which conferred jurisdiction on District Courts to deal with certain cases has taken away all right to proceed under the repealed statute, even in actions which were pending but undetermined at the time of repeal.

The Indian Companies Act 1956, declared that the High Court alone shall have jurisdiction in respect of companies with a paid-up share capital of Rs. 1,00,000 or more. A question at once arose whether the winding-up proceedings in respect of such companies which were pending in the Courts of District Judges under the Act of 1913 should continue to be retained and determined by the District Judges concerned or whether they should be transferred to this Court. As this question is likely to arise in a number of cases, a learned Single Judge has directed that it be placed before a larger Bench for decision.

It is a well settled rule of common law that when an action is brought under a statute which is afterwards repealed, the Court loses jurisdiction of the

suit pending under the repealed Act and is unable to deliver judgment therein. The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed ; and it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law *Kav* v. *Goodwin* (1). It follows as a corollary that if a statute is unconditionally repealed without a saving clause in favour of pending suits, all actions must stop where the repeal finds them, and if final relief has not been granted before the repeal goes into effect, it cannot be afterwards *Merlo* v. *Johnston City and B. M. Goal and Min* (2), A similar principle applies to a law confering jurisdiction and it has been held repeatedly that the repeal of a statute giving jurisdiction to a Court deprives it of the right to pronounce judgment in a proceeding previously pending. This principle has been stated with admirable clarity in the case of *Hunt* v. *Jennings* (3) where Blackford, J., expressed the view that whenever a statute from which a Court derives its jurisdiction in particular cases is repealed, the Court has no right to proceed under the repealed statute even in suits pending at the time of the repeal, unless the right is expressly saved by the repealing Act or by a general Act regulating repeals.

To mitigate this harash rule of the common law, the Legislature considers it expedient from time to time to enact saving clauses which expressly provide that whenever a statute shall be repealed, such repeal shall not affect pending actions founded thereon. There are at least two saving clauses which are applicable to the winding-up proceedings which were pending in the Courts

(1) (1830) 6 Bing. 576, 582
(2) Co. (1913) 258 Illimors 328
(3) American Decisions 465

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of District Judges under the Act of 1913. The first saving clause appears in the body of the repealing statute, for section 647 of the Act of 1956 is in the following terms :—

"647. Where the winding-up of a company has commenced before the commencement of this Act—

(i) * * * * *

(ii) The other provisions with respect to winding up contained in this Act shall not apply, but the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed."

Now, what was the object of this saving clause and what provisions did Parliament intend to protect from the operation of the repealing power ? It is possible to contend, as was contended in the present case, that the section has application only to the "manner" and "incidents" of the winding up and has no reference to the jurisdiction of the Court. It does not declare that the winding up proceedings shall not be taken up by the High Court as contemplated by the Act of 1956 or that they would be taken up only by the District Judge as contemplated by the Act of 1913. If, it is argued, Parliament had intended to refer to jurisdiction, it could easily have found apt words or phrases to express its intention.

I regret I am unable to concur in this contention. In the first place, I am of the opinion that Parliament has used appropriate language to express its intention. The expression "manner" as

defined by Webster means "Mode of action ; way of performing or effecting anything ; method ; style ; form or fashion." As defined by the Century Dictionary it means. "The way in which an action is performed ; method of doing antyhing ; mode of proceeding in any case or situation ; mode ; way ; method." The word "manner" refers to the mode in which a thing is to be done, the way in which an act is to be performed, the method or procedure which is to be adopted in a particular case or situation. It has a broader meaning than method and embraces both "method" and "mode". (words and phrases Volume 26).

The expression "incident" as defined in Burrill's Dictionary means "Belonging or appertaining to ; following ; depending upon another thing as more worthy.....A thing may be necessarily or inseparately incident to another or usually so." This expression as defined by Webster means "something necessarily appertaining to or depending on another, which is termed the principal." Incident is something which appertains to or follows another that is more worthy. The expression "incidental" means something which is only an adjunct to something else and is used to convey the idea of a thing subordinate to, dependent on, and pertaining to another thing which is the principal one. A thing incidental to an express provision is dependent or ancillary to it. (Words and Phrases Volume 20). Having regard to the meaning of the expressions "manner" and "incident" and to the object of section 647 it seems to me that the statutory requirement that "every such company shall be wound up in the same manner and with the same incidents as if this Act had not been passed "means that it will be wound up in the same way, in accordance with the same procedure, and by the same authorities as provided in the Act of 1913. In other

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words, it means that the company shall be wound up in accordance with the provisions of the Indian Companies Act, of 1913, and not in accordance with the provisions of the Act of 1956.

Secondly, the language employed in the Act of 1956, is almost identical with the language employed in section 284 of the Act of 1913. In *Daulat Rai* v. *Wazir Chand* (1), Shadi Lal, J., held that the provisions of section 284 were sufficiently wide to preserve the jurisdiction of District Courts over cases which began before the commencement of the Act of 1913 and that the plain and rational meaning of the said section was that the new Act was to operate upon proceedings arising out of windings up which commenced after its enforcement and that no part of the Act had application to liquidations pending under the Act of 1882. In other words the provisions of section 284 were held to apply not only to the "manner" and "incidents" but also to jurisdiction of the Court. It is an accepted principle of law that the same words used in different statutes on the same subject are interpreted to have the same meaning. Indeed, it has been said that if a statutory meaning is attached to certain words in a prior Act, there is a presumption of some force that the Legislature intended that they should have the same signification when used in a subsequent Act in relation to the same subject-matter. I am of the opinion that the expressions "manner" and "incidents" appearing in the Act of 1956 are intended to have the same force and effect as the same expressions had in the Act of 1913 which was superceded by the Act of 1956. *A. Ananthasubramonia Ayyar* v. *The Official Receiversita Ram Spinning and Weaving Mills, Ltd.* (2).

(1) (1915) 29 I.C. 272

(2) A.I.R. 1957 T.C. 51

Thirdly, it seems to me that even if the phraseology employed by the Legislature is awkward, slovenly or inappropriate, the Legislature intended that winding-up proceedings which were pending in the District Courts should continue to remain there. When the intention of the Legislature is not clearly expressed and choice is to be made between two possible interpretations, we must ask ourselves the question which choice is it the more likely that Parliament would have made ?" *Burnet* v. *Guggeheim* (1). Would they have liked all winding-up proceeding which were pending in the District Courts under the Act of 1913 to stay where they were or would they have liked all such proceedings to be transferred to the High Court ? The answer is clear. The first course is convenient; the second unreasonable or absurd. It is a well known rule of contruction that where a statute is ambiguous and susceptible of two constructions, convenience may be taken into consideration in the interpretation thereof. A construction which produces convenient results is favoured while a construction which produces inconvenient results is avoided. In any case the courts must steer clear of a construction which would be unjust, oppressive, unreasonable or absurd.

The second saving clause is embodied in section 6 of the General Clauses Act, 1897, and is a part of every Act passed by the Central Legislature in the same way as if it were expressly enacted in the body of the Act itself. It has been applied specifically to proceedings under the Act of 1913, for section 658 of the Act of 1956, declares that the mention of particular matters in sections 645 to 657 or in any other provisions of the latter Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 with respect

(1) 288 U.S. 280, 285

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to the effect of repeals. Section 6 of the Act of 1897, provides that in every Central Act passed after 1897, unless a contrary intention appears in the repealing Act, the repeal shall not affect any investigation, legal proceeding or remedy and that any such investigation, legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. Or, to put in a slightly different language, this provision declares that proceedings which were commenced by virtue of a statute which has been repealed shall not be dismissed by the Court for want of jurisdiction after the repeal of that statute, as under the common law, but that the said proceedings shall continue to be dealt with by the Court as before and shall be carried to final judgment and execution by the said Court in exactly the same way as if the statute had not been repealed.

It is common ground that proceedings relating to the winding up of a company are legal proceedings, that these legal proceedings were pending in the Courts of District Judges at the time of repeal and that in view of the provisions of section 6 of the General Clauses Act, they are completely unaffected by the repeal. It seems to me therefore, that it is within the competence of the District Judges in whose Courts the said proceedings were pending immediately before the commencement of the Act of 1956 to decide them in accordance with the provisions of the Act of 1913.

Nor can it be said that the Act of 1956 operates retrospectively and applies automatically to pending proceedings, for although the legislature has the power to give a statute retrospective operation, yet it is to be presumed that the legislature intended statutes enacted by it to operate prospectively only and not retrospectively, unless the

tention of the legislature to make the statute retrospective is stated in express terms or is unambiguously shown by necessary implication. There is nothing in the language of section 10 of the Act of 1956 which would impel the Court to hold that the said section was intended to be retrospective. In this view of the case it seems to me that the Act of 1956 would have no effect on litigations pending at the time it was enacted.

If, as pointed out by Cardozo, J., in *Panama Refining Co.* v. *Ryan* (1), the meaning of a statute is to be looked for, not in any single section but in all the parts together and in their relation to the end in view, it seems to me that by enacting sections 647 and 658 the legislature intended that the repeal of the Act of 1913 by the Act of 1956 shall not affect pending actions founded on the earlier statute and that no pending action or proceeding shall be affected by the repealing statute. I am accordingly of the opinion that it is open to a District Judge in whose Court a winding-up proceeding was pending before the Act of 1956, came into force to retain the said proceeding in his Court and to pass judgment thereon in accordance with the provisions of the Act of 1913. It is not necessary under the provisions of the Act of 1956 to transfer the said proceedings to the High Court. Let an appropriate answer be returned to the question which has been referred to us.

FALSHAW, J.—I agree.

MEHAR SINGH, J.—I agree.

B.R.T.

(1) 293 U.S. 388, 433, 439