Paragraph 10 is in the following terms:—

> "10. Save as provided by this Order, all powers which under any law in force in British India, or in any part of British India, were immediately before the commencement of Part III of the Government of India Act, 1935, vested in, or exercisable by, any person or authority shall continue to be so vested or exercisable until other provision is made by some legislature or authority empowered to regulate the matter in question."

A perusal of these provisions of law makes it quite clear that the Financial Commissioner who had power to appoint and to dismiss the Tahsildars, continues to exercise these powers. These powers have not been abrogated or withdrawn.

For these reasons, I would accept the appeal, set aside the order of the learned Single Judge and dismiss the petition. Having regard to the intricacy of the point in issue, I would leave the parties to bear their own costs.

Dulat. J.—I agree. Dulat, J.

B. R. T.

CIVIL WRIT.

*Before Bishan Narain, J.*

THE HYDERABAD (SIND) ELECTRIC SUPPLY CO. Ltd.,—*Petitioner.*

*versus*

UNION OF INDIA, ETC.,—*Respondents.*

**Civil Writ Case No. 199-D of 1955.**

1958

Sept. 5th

*Displaced Persons (Claims) Supplementary Act (XII of 1954)—Section 5(b)—Settlement Commissioner—Whether can reopen and redecide any claim which had already*

*been finally decided under the Displaced Persons (Claims) Act, 1950—Displaced Persons (Verification of Claims) Supplementary Rules, 1954—Rule 18(iv)—Whether should be construed by the application of the rule* ejusdem generis *—Plea that the company is not a displaced person and has left no assests in West Pakistan—Whether sufficient reason for reopening the verified claim—Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 43—Registration of a company under—Effect of—Interpretation of Statutes—Rule of* ejusdem generis*—Application of—Rule that the Legislature attaches the same meaning to the same expression of different statutes or in different parts of the same statute—Extent of—*

*Held,* that the bare reading of section 5(b) of the Displaced Persons (Claims) Supplementary Act, 1954, makes it clear that the Chief Settlement Commissioner has power subject to rules to reopen and to redecide any claim already decided under the principal Act of 1950. This power has admittedly been delegated to the Settlement Commissioner. Therefore, the Settlement Commissioner could reopen and redecide any claim on application or of his own motion which had already been finally decided under the 1950 Act. Even if it be assumed that the Claims Commissioner under the 1950 Act and the Settlement Commissioner under the 1954 Act are authorities of co-ordinate jurisdiction it does not affect the power of the latter under delegated powers of the Chief Settlement Commissioner to reopen the decision of the former. This power, however, is subject to the rules framed under the Act.

*Held,* that Rule 18(iv) of the Displaced Persons (Verification of Claims) Supplementary Rules, 1954, cannot be construed by the application of the rule of *ejusdem generis*. Its words must be read according to their tenor. There is no reason for construing the general ground in a restricted sense. Such a restricted construction may defeat the object of the Act by preventing a Chief Settlement Commissioner from reopening and revising a verification and valuation made under the 1950 Act. Moreover, specific grounds given in the rule are of widely differing character and cannot be considered to belong to one class. In the absence of such a genus or category it is not possible to apply the rule of *ejusdem generis* in construing rule 18(iv). In the present case the matter has been reopened on the ground that the

Company is not a displaced Company and has left no property in Pakistan which can be valued under the Claims Act of 1950. This is obviously a very cogent reason for revising the verification and valuation made under the 1950 Act.

*Held,* that a company registered under section 43 of the Displaced Persons (Debts Adjustment) Act, 1951, should be considered to be an Indian Company for purposes of that Act only and for no other purpose. It is impossible to hold that by such a registration the residence and domicile of the Companys changed or it has the effect of transferring the registered office of this Company from Hyderabad (Sind) to Bombay. That being so, it cannot be said that the Company has migrated to India and if it has not so migrated then it cannot be considered to be a displaced Company.

*Held further,* that a Company registered under section 43 of Act LXX of 1951, is to be considered to be a Company merely to realise its dues from persons residing or carrying on business in this country. The purpose for which it is deemed to be a registered Company is limited to this purpose only. No money can be realised from it if any sum is due to a person residing in India from the parent Company domiciled in Pakistan. The words "among other matters" in this section are limited to matters mentioned in the Act and not beyond. These matters include matters dealt with in sections 19 and 20 of the Debts Adjustment Act. By no stretch of imagination can these words be extended so as to make the Company a displaced Company under the Claims Act of 1950, by holding that its registered office has been transferred from Hyderabad (Sind) to Bombay. Similarly it is impossible to hold that the property which belongs to a foreign Company with its residence in Hyderabad (Sind) had become the property of the Company registered under section 43 of the Displaced Persons (Debts Adjustment) Act.

*Held,* that the rule of *ejusdem generis* should be applied or restricted meaning should be given to general words only when there are clear indications in the particular provision under consideration or if it advances the general purpose and object of the provision and not otherwise. The trend of authorities in recent times has been to apply this rule with caution. This rule may, however, be considered to be suitable for application to penal statutes. In the modern

set up of welfare state the Legislature generally impinges on all kinds of activities of the citizens of this country and it is not possibe for the legislature to provide for every possible contingency. To meet this situation the Legislature often uses general words after using specific words to enable the authorities constituted under the statute to meet all contingencies that may arise. In such cases the purpose of statute may be defeated if restricted meanings are given to the general words used by the Legislature. Moreover, it is well settled that this rule of *ejusdem generis* cannot be invoked at all if in the provision under consideration specific words enumerate subjects which greatly differ from each other. After all it must not be forgotten that every expression used in the statute must be construed ordinarily in its natural sense and general words should be gven general meaning unless the context indicates otherwise.

*Held further,* that whether the rule of *ejusdem generis* should be applied to a particular provision depends on its terms and the purpose and object the provision is intended to achieve. The fact that this particular rule has been applied to one provision is no indication that it should be applied to another provision even if it occurs in the same enactment. It is necessary to examine the text of each provision with its context to determine whether this rule of *ejusdem generis* should or should not be applied in construing the particular provision under consideration.

*Held,* that ordinarily same meanings to the same words occurring in different parts of the statute or in the rules framed thereunder should be given but it is well established that this principle raising this presumption is very slight as the same words or expression may be used in the same Act or even in the same section in two different senses. Words take their colour from their context.

*Petition under Adticles 226 and 227 of the Constitution of India praying that such order, Writ or direction be issued to the Respondents as may do complete justice to the Petitioner-Company in the circumstances of the case and in particular;*

*(i) A writ in the nature of Certiorari or and appropriate direction, order or writ be issued against the Respondents quashing the said order of Respondent No. 3 and /or directing them to withdraw or cancel the said order.*

*(ii) That costs of and incidental to this Petition be paid to your petitioner.*

S. K. KAPUR, R. N. SURI, P. C. KHANNA, for Petitioner.

BISHAMBAR DAYAL and KESHAV DAYAL, for Respondent.

ORDER

Bishan Narain, J.

The facts leading to this writ petition under Article 226 of the Constitution are not in dispute. The Hyderabad (Sind) Electric Supply Company, Limited, was registered under the Indian Companies Act, 1913, with its registered office at Hyderabad (Sind). It held licence under the Indian Electricity Act, 1910, to supply electricity. After 1st March, 1947, and presumably on account of partition of the country, about eighty per cent of the shareholders of the Company and six out of the nine directors migrated to India. Mangha Ram was its Managing Director for life. When he migrated to India, he left the Company in charge of one Mohammad Bakhsh who was his authorissed agent. The Company went on functioning till 1951. The Pakistan Government revoked the Company's license with effect from 16th January, 1951. Mangha Ram as Managing Director of the Company preferred a claim under the Displaced Persons (Claims) Act, Act XLIV of 1950, on the allegation that the Company had left machinery, immovable properties etc. in Pakistan, i.e. Hyderabad (Sind) and sought valuation of the same. By order dated 30th August, 1952, the Claims Officer (Industrial) valued the claim at Rs. 51,00,000, but disallowed it on the ground that the Company had not been proved to be a displaceed body. The petitioner filed a revision petition before the Chief Claims Commissioner, but it was also dismissed by order dated 26th February, 1953. In this order, however, Shri I. M. Lall,

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Chief Claims Commissioner, observed that if subsequent to the dismissal of the revision petition the Company is recognized by the Registrar of Companies, Bombay, and there is a change of status, it can apply to the appropriate authority for reconsideration of this order. It appears that before the Chief Claims Commissioner heard the revision, an application had been made to the Registrar of Companies, Bombay, for recognition and registration of the Company under section 43 of the Displaced Persons (Debts Adjustment) Act, 1951. The Company was so recognised and registered on 29th April, 1953, at Bombay. Mangha Ram on behalf of the Company, as registered under the Debts Adjustment Act, thereupon again applied on 30th April, 1953, to the Chief Claims Commissioner to value its assets left in Pakistan. This application was sent to the Claims Commissioner for valuation. He came to the conclusion that after registration under the Debts Adjustment Act the Company had become a displaced Company and by order dated the 16th of May, 1953, he valued the claim at Rs. 44,32,500 subject to a mortgage of Rs. 2,24,000 of the Sind Government. In 1954, the Displaced Persons (Claims) Supplementary Act, 1954, was passed and on 16th March, 1955, the Settlement Commissioner issued a notice to Mangha Ram, Managing Director of the Company, to show cause why the order of the Claims Officer dated 30th August, 1952, should not be revised and called upon him to appear before him on 31st March, 1955. Thereafter on 19th May, 1955 another notice was sent to him to show cause why the order of the Claims Commissioner dated 16th May, 1953 should not be revised. The Settlement Commissioner after hearing the parties held that the Company was not a displaced Company and set aside the valuation made by the Claims

Commissioner. This order was made on 28th September, 1955. The Company through Mangha Ram has challenged the validity of this order of the Settlement Commissioner by the present writ petition.

The learned counsel for the petitioner challenges the validity of the impugned order on the grounds (1) that the Settlement Commissioner had no jurisdiction to revise the order of the Claims Commissioner dated the 16th May, 1953, and (2) that the order is erroneous on the face of it.

The contention raised on behalf of the Company in the first ground is that the Claims Commissioner (Shri K. G. Bhojwani in 1953) under the Act of 1950 and the Settlement Commissioner (Shri R. K. Vaish in 1955) under the 1954 Act being authorities of co-ordinate jurisdiction, the latter could not reopen and revise the decision of the former and that, in any case, the Settlement Commissioner had reopened the case in contravention of rule 18 made under the Displaced Persons (Claims) Suplementary Act, 1954. To determine the soundness of this contention it is necessary to refer to the statutory provisions relevant for this purpose.

When India was partitioned in 1947 there was compulsory migration of population from West Pakistan to India and vice versa. The magrants left most of their properties in places where they had resided and carried on business before the migration. To assist the displaced persons the Parliament placed several statutes on the Statute Book. One of these statutes is the Displaced Persons (Claims) Act, 1950. Under this Act authorities were appointed and procedure was

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laid down for verification of claims of displaced persons. The "Claim" is defined in the Act as assertion of a right to the ownership or to any interest in the properties left in West Pakistan. Thus under the Act the right of a displaced person to any interest in such property and the value therefore is to be determined by the Claims Officer who after registering the claim has to send the relevant papers to the Central Government. The order of the Claims Officer is final and is only subject to the revisional powers of the Chief Claims Commissioner. In 1954 the Displaced Persons (Claims) Supplementary Act was passed. In this enactment special powers in respect of cases finally decided under the 1950 Act were given to the Chief Settlement Commissioner on application or on his own motion to revise them. Under section 10 this power may be delegated to the Settlement Commissioner, and it was so delegated so far as the present case is concerned. Rule-making power has been given by section 12 to the Central Government to carry out the purpose of this Act. Rules have been framed under the 1954 Act and are called "The Displaced Persons (Verification of Claims) Supplementary Rules, 1954." Rule 18 lays down the grounds on which the Chief Settlement Commissioner or his delegate may reopen the cases decided under the 1950 Act.

This rule reads—

> "The Chief Settlement Commissioner may, while exercising the powers of special revision conferred on him by clause (b) of sub-section (1) of section 5, call for the record of any verified claim and may pass any order in revision in respect of such verified claim in such manner

as he thinks fit, if he is satisfied that such order should be passed on one or the following grounds, namely:—

(i) the discovery of any new matter or documentary evidence which after the exercise of due diligence was not within the knowledge of or could not be produced by, the claimant at the time when the claim was verified; or

(ii) correction of any clerical or arithmetical mistake apparent on the face of the record. or

(iii) gross or material irregularity or disparity in the valuation of the claim; or

(iv) any other sufficient reason:

Provided that the Chief Settlement Commissioner shall not entertain or take into consideration any application or representation made to him under this rule by any claimant, if such application or representation is made after the expiry of thirty days from the commencement of these rules."

Now, the bare reading of section 5(b) of the 1954 Act makes it clear that the Chief Settlement Commissioner has power subject to rules to reopen and to redecide any claim already decided under the principal Act of 1950. This power has admittedly been delegated to the Settlement Commissioner. Therefore the Settlement Commissioner

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could reopen and redecide any claim on application or of his own motion which had already been finally decided under the 1950 Act. Even if it be assumed that the Claims Commissioner under the 1950 Act and the Settlement Comissioner under the 1954 Act are authorities of co-ordinate jurisdiction it does affect the power of the latter under delegated powers of the Chief Settlement Commissioner to reopen the decision of the former.

This power, however, is subject to the rules framed under the Act. Section 18 is the relevant rule and has already been reproduced. In the present case the decision of the Claims Commissioner has been re-opened to determine whether or not the Company through Mangha Ram is a "displaced person" within the Displaced Persons (Claims) Act, 1950. I, therefore, agree with the learned Counsel for the petitioner that clauses (i), (ii) and (iii) of rule 18 have no application to the present case and that this power could be exercised only under the residuary rule 18(iv). I may state here that this point was not urged before the Settlement Commissioner and, therefore, we have no indication of his views on the point.

It has been argued on behalf of the Company that the expression "any other sufficient reason" which occurs in Rule 18(iv) should be given restricted meaning and should be construed according to the rule of eiusdem generis. The contention is that where there are general words following particular and specific words the general words the general words must be confined to things of the same kind as those specified as otherwise it would be held that the Legislature took the trouble of mentioning any of these items specifically unnecessarily and for no reason whatso ever. he learned Counsel pointed out that simi-

lar expression used in Order 47, Rule 1, Civil Procedure Code; has been given restricted meaning in *Chhajju Ram* v. *Neki and others* (1), and in *Moran Mar Basselios Catholics and another* v. *Most Rev. Mar Poulose Athanasius and others* (2), and has been construed as meaning "a reason sufficient on grounds, at least analogous to those specified in the rule". Reliance was also placed on the decisions reported in *Ramrao Bhagwantrao Inamdar and another* v. *Babu Appannan Samage and others* (3), and in *Abdul Ghaffor* v. *Abdul Rahmony* (4), where restricted meanings have been given to the expression "other sufficient grounds" occuring in Order 23, Rule 1(2), Civil Procedure Code.

In my opinion the rule of *ejusdem generis* should be applied or restricted meaning should be given to general words only when there are clear indications in the particular provision under consideration or if it advances the general purpose and object of the provision and not otherwise. The trend of authorities in recent times has been to apply this rule with caution. This rule may, however, be considered to be suitable for application to penal statutes. In the modern set up of welfare state the Legislature generally impinges on all kinds of activities of the citizens of this country and it is not possible for the legislature to provide for every possible contingency. To meet this situation the Legislature often uses general words after using specific words to enable the authorities constituted under the statute to meet all contingencies that may arise. In such cases the purpose of statute may be defeated if restricted meanings are given to the general words used by the Legislature. Moreover it is well settled that this rule of

(1) I.L.R. 3 Lah. 127
(2) 1954 S.C. 526
(3) A.I.R. 1940 Bom. 121
(4) 1951 All. 845 (F.B.)

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*ejusdem generis* cannot be invoked at all if in the provision under consideration specific words enumerate subjects which greatly differ from each other. After all it must not be forgotten that every expression used in the statute must be construed ordinarily in its natural sense and general words should be given general meaning unless the context indicates otherwise. Crawford in his well known book "Statutory Construction" has described this rule of construction in these words:—

> "Its use is permissible only as an aid to the court in its attempt to ascertain the intent of the law makers. Nor will it be proper for the court to follow the rule where to do so will defeat or impair the plain purpose of the legislature. It cannot be employed to restrict the operation of an act within narrower limits than was intended by the law makers. Nor is the rule to be applied where specific words enumerate subjects which greatly differ from each other, or where the specific words exhaust all the objects of the class mentioned. Under these circumstances, the general words must have a different meaning from that of the specific words or be meaningless. And, of course, the legislature cannot be presumed to have used any word without intending that it mean something."

Whether the rule of *ejusdem generis* should be applied to a particular provision depends on its terms and the purpose and object the provision is intended to achieve. The fact that this particular rule has been applied to one provision is no indication that it should be applied to another provision even if it occurs in the same enactment. It

is necessary to examine the text of each provision with its context to determine whether this rule of *ejusdem generis* should or should not be applied in construing the particular provision under consideration. In this view of the matter it is necessary to discuss the reason why similar expression in Order 47, Rule 1, Civil Procedure Code has been construed in a restricted sense by the Privy Council and the Supreme Court. For the same reasons it is not necessary to discuss the decisions under Order 23 Rule 1(2), Civil Procedure Code but I may point out that the view taken by the Bombay and Allahabad High Courts has not been accepted by the Lahore High Court in *Gurprit Singh and another* v. *Punjab Government* (1).

This brings me to the facts of the present case. Now claims of the Displaced Persons were verified by the Claims Officer under the Displaced Persons (Claims) Act, 1950. This verification became final subject to the decision of the revising authority appointed under the 1950 Act. Rule 3 made under the Act gave to the Claims Officer some of the powers available to a Civil Court under the Civil Procedure Code including the power to review his own order on the grounds mentioned in Order 47, Rule 1, Civil Procedure Code. The Legislature, in 1954, enacted the Displaced Persons (Claims) Supplementary Act 1954, granting special powers to the Chief Settlement Commissioner to reopen and revise the cases which had been finally decided under the 1950 Act. This power is subject to the rules made under the later Act. Rule 18 is the rule which concerns us. Under this rule it has been laid down that a valuation made under the 1950 Act can be revised if the Chief Settlement Commissioner is satisfied that (1) new matter or documentary evidence has been

(1) A.I.R. 1946 Lah. 429

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discovered or that (2) there is a clerical or arithmetical mistake which is apparent on the face of the record or that (3) there has been gross or material irregularity in the valuation or that (4) there is any other sufficient reason. It is to be noted that the first ground is partially but not wholly covered by Order 47, Rule 1, Civil Procedure Code. The second ground is in a way covered by section 153, Civil Procedure Code while the third ground is not covered by any provision in the Civil Procedure Code. The fourth is a general ground. In this context there is no reason for construing the general ground in a restricted sense. Such a restricted construction may defeat the object of the Act by preventing a Chief Settlement Commissioner from reopening and revising a verification and valuation made under the 1950 Act. Moreover specific grounds given in the rule are of widely differing character and cannot be considered to belong to one class. In the absence of such a genus or category it is not possible to apply the rule of *ejusdem generis* in construing rule 18(iv).

The learned counsel for the petitioning Company in support of his contention also pressed into service the rule of construction which lays down that ordinarily it should be presumed that the legislature attaches the same meanings to the same expression occurring in different statutes or in different parts of the same statute. It is argued that the words "any other sufficient reason" occur in Order 47, Rule 1, Civil Procedure Code, to which rule of *ejusdem generis* has been applied by the Privy Council and the Supreme Court. These words also occur in Rule 3(d) under the 1950 Act which gives powers of review to the Consolidation Officer. Therefore, these general words in rule 3(d), it is argued, should also be construed in

restricted sense. That being so, Rule 18(iv) relating to the same Act (reading 1950 and 1954 Acts together) containing these words should also be construed in restricted sense. I find myself unable to accept this contention. It is true that ordinarily same meanings to the same words occuring in different parts of the statute or in the rules framed thereunder should be given but it is well established that this principle raising this presumption is very slight as the same words or expressions may be used in the same Act or even in the same section in two digerent senses. Words their colour from their context. Maxwell has stated this rule of construction in these words.—

> "It is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act .....But the presumption is not of much weight. The same word may be used in different senses in the same statute and even in the same section."

This rule has been accepted as correct by the Supreme Court in *State of Uttar Pradesh* v. C. *Tobit and others* (1), wherein it has also been observed that "in order to come to a decision as to the meaning of a word one has to enquire as to the subject matter of the enactment and the object which the legislature had in view". Even assuming that the general words used in Rule 3(d) made under the Claims Act of 1950 are to be construed in restricted sense, it does not follow that rule 18(iv) made under the 1954 Act must also be read in restricted sense where the circumstances in which the two rules were made are widely different and where the specific words are also of

(1) A.I.R. 1958 S.C. 414

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widely different and of distinctly different categories.

For these reasons I am of the opinion that Rule 18(iv) cannot be construed by the application of the rule *ejusdem generis* and that its words must be read according to their tenor. In the present case the matter has been reopened on the ground that the Company is not a displaced Company and has left no property in Pakistan which can be valued under the Claims Act of 1950. This is obviously a very cogent reason for revising the verification and valuation made under the 1950 Act.

This brings me to the second contention raised on behalf of the petitioning Company. The claim was originally rejected by the Claims Officer on the ground that the Company was not a displaced person within the Claims Act of 1950. Subsequently the Company got recognised and registered under section 43 of the Displaced Persons (Debts Adjustment) Act and applied for a reconsideration of the matter under the Claims Act of 1950. The Claims Commissioner held that the Company had become a displaced body since its registration under the Debts Adjustment Act. This view was contested and the matter was reopened under the 1954 Act. The Settlement Commissioner, after hearing the parties, in a lengthy order has come to the conclusion that the Company was not a displaced body and its claim could not be verified under the Claims Act. It is argued that this conclusion is esroneous on the face of the record.

Now it has been held by the Supreme Court in Basappa's case *T. C. Basappa* v. *T. Nagappa and another* (1), that a writ may be issued to quash a

(1) A.I.R. 1954 S.C. 440

manifest or patent error but not to correct a mere wrong decision and again in *Hari Vishun Kamath* v. *Ahmad Ishaque and others* (1), it has been held that error must be manifest on the face of the record and that no error could be manifest if it was not self evident and if it required examination or arguments to establish the error. If these tests are applied to the present case then I have no doubt that the impugned order does not disclose any error apparent on the face of the record. The Settlement Commissioner has given a reasoned judgment and if the arguments of the learned counsel for the petitioning Company are accepted then it can only mean that the decision is erroneous in law and nothing more. However, I do not wish to base my decision on this technical consideration as I am of the opinion that the petitioning Company has failed to show that the decision of the Settlement Commissioner is at all erroneous.

Before dealing with the contentions raised on behalf of the petitioning Company I may notice one argument of the learned counsel for the respondent. He argued that the 'displaced person' as defined in the Claims Act is limited to individuals and cannot include a Company and in support of his contention he has relied on *Karnaphuli Jute Mills, Limited* v. *Union of India* (2), and on some observations in *Iron and Hardware (India) Co.*, v. *Firm Shamlal and Bros.* (3): It is, however, not necessary to discuss this matter at length as a Division Bench of our High Court in *Messrs. Parry and Company, Limited, Bombay* v. *The Okara Electric Supply Company, Limited, Delhi* (4). has held that a company in a proper case can be

(1) A.I.R. 1955 S.C. 233
(2) A.I.R. 1956 Cal. 71 (75)
(3) A.I.R. 1954 Bom. 423
(4) R.I.A. 159 of 1951

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held to be a displaced company. This decision is binding on me. I, therefore, reject this contention of the learned counsel for the respondent.

I now proceed to discuss the second contention of the learned counsel for the petitioning Company. Before 1947, admittedly the Hyderabad (Sind) Electric Supply Company, Limited, was registered under the Indian Companies Act, 1913. Its registered office was and still is at Hyderabad (Sind). Its residence, therefore, is there. The Company on incorporation became a legal entity or a personal distinct from its individual members and shareholders. The property of the Company cannot be considered to be the property of the members. It has been laid down in *In re George Newman and Company* (1), that an incorporated company's assets are its property and not the property of the shareholders for the time being. and, if the directors misapply those assets by applying them to purposes for which they cannot be lawfully applied by the company itself, the company can make them liable for such misapplication as soon as any one sets hte Company in moion."

The registered office of the Company has never been changed from Hyderabad (Sind) and therefore, on partition of the country it became a foreign company although majority of its shareholders and directors had migrated to India and had become 'displaced persons'. Admittedly the Company went on functioning in Pakistan through Mohd Bux, the attorney of Mangha Ram, the Managing Director of the Company. The fact that the majority of share-holders had migrated to India did not and could not change the nationality and domicile of the Company,—*vide Janson* v. Driefontein Consolidated Mines, Limited, (2).

(1) (1895) 1 Ch. 674 at p. 685
(2) (1902) A.C. 484 (497)

The Hyderabad (Sind) Electric Company having become a foreign Company with effect from 14th of August, 1947 could not be registered as an existing company under the Indian Companies Act. Lord Justice James in *Bulkeley* v. *Schutz* (1), has, while dealing with the English Companies Act, 1862; obsedved:—

> "Their Lordships are clearly of opinion, that Act never contemplated that a Foreign partnership, actually complete and existing in a Foreign Country, could be brought within the purview of the English Act of Parliament, the English Legislature having no power over the shareholders of such a Company. The only mode in which they could have done it would have been, not to register themselves as a Company, which was the only thing they could do honestly towards their Shareholders, or literally to comply with the Order, but to have gone through the form of dissolving the Company and of forming a new Company altogether, which is a totally different thing."

It follows from these observations that a foreign company cannot be registered in this country under the Indian Companies Act. It is clear that the company concerned never made any efforts to change its domicile by transferring its registered office from Hyderabad (Sind) to any territory in India before the partition of the country. It follows that the Company domiciled in Hyderabad (Sind) before the partition of the country cannot be held to have migrated to this country in the circumstances mentioned in the Displaced Persons (Claim Act of 1950. That being so, the property

(1) 1871) L.R. 3 P.C. 764 at p. 769

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belonging to this Company and situated in Hyderabad (Sind) cannot be said to be property left by a 'displaced Person' in Pakistan which could be verified and valued under the Claims Act, 1950. The fact that the license of this Company has not been renewed by the Pakistan Government since 1951 cannot possibly affect the position. It is not alleged that that Company has gone into liquidation and as long as that does not happen the shareholders cannot claim its assets (though subject to payment of its liabilities) as the property of individual shareholders. It will not be out of place to mention that this Company never transacted any business within the present India as is evident from the fact that it never took any proceedings under section 277 of the Indian Companies Act.

The case of the petitioning Company, however, is that the Registrar has accorded recognition to this Company and has entered its name in his register under section 43 of the Displaced Persons (Debts Adjustment) Act and, therefore under section 43(4) the Company should be deemed to have been formed and registered under the Indian Companies Act 1913. On the basis of this fact it is argued that on registration it must be held that the Company has migrated from Pakistan and has become a displaced Company and that being so, the property left in Pakistan by the Company can be verified and valued under the Claims Act 1950. The learned counsel has, in the course of his arguments, ralied on the following portion of section 43(4) of the Debts Adjustment Act, 1951:

> "the society or the company, as the case may be, shall be deemed to have been formed and registered under the relevant law as in force in India, and every such

society or company shall, among other matters, have the right to demand and receive any money due to it from any person residing or carrying on business in India."

Now the effect of this statutory provision is that under certain conditions laid down in section 43 the Registrar of Companies may recognise a foreign Company and register it and when that has been done it would be deemed to have been registered in India. The question arises whether this recognition and registration holds good for all purposes or is limited to the purposes of the Debts Adjustment Act. Now Section 2(1) of the Act defines a 'Company' as meaning 'a company as defined in the Indian Companies Act, 1913 (VII of 1913), and includes a Company deemed to be registered under that Act by reason of any of the provisions contained in this Act." From this definition it is clear that for the purposes of the Debts Adjustment Act, all companies registered under the Indian Companies Act or registered under any section of this Act are to be considered to be Companies under the Debts Adjustment Act. It appears to me that in view of this extended definition a Company registered by virtue of section 43 of the Debts Adjustment Act should be considered to be an Indian Company for the purposes of the Debts Adjustment Act only and for no other purpose. As I have already discussed a foreign Company cannot be registered as an existing Company under the Indian Companies Act and, therefore, registration under section 43 of the Debts Adjustment Act is limited for the purposes of that Act and not for general purposes. It is impossible to hold that by such a registration the residence and domicile of the Company is changed or it has the effect of transferring the registered

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office of this Company from Hyderabad (Sind) to Bombay. That being so, it cannot be said that the Company has migrated to India and if it has not so migrated then it cannot be considered to be a displaced company.

This conclusion is fortified by the provisions of section 43 of the Act. It says that among other things it will have the right to demand and receive moneys due to the Company from any person residing or carrying on business in India. It is, therefore, clear that it is to be considered to be a Company merely to realise its dues from persons residing or carrying on business in this country.

The purpose for which it is deemed to be a registered Company is limited to this purpose only. No money can be realised from it if any sum is due to a person residing in India from the parent Company domiciled in Pakistan. The words "among other matters" in this section are limited to matters mentioned in the Act and not beyond. These matters include matters dealt with in section 19 and 20 of the Debts Adjustment Act. By no stretch of imagination can these words be extended so as to make the Company a displaced Company under the Claims Act of 1950 by holding that its registered office has been transferred from Hyderabad (Sind) to Bombay. Similarly it is impossible to hold that the property which belongs to a foreign Company with its residence in Hyderabad (Sind) had become the property of the Company registered under section 43 of the Displaced Persons (Debts Adjustment) Act.

For these reasons I am of the opinion that the decision of the Settlement Commissioner that the petitioning Company is not a displaced Company

is correct. I am also of the opinion that the petitioning Company has failed to prove that it has left any property in Pakistan.

The result is that this petition fails and is dismissed with costs. Counsel's fee Rs. 150.

*B.R.T.*

The Hyderabad (Sind) Electric Supply Company, Limited
*v.*
Union of India, etc.

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CRIMINAL MISCELLANEOUS.

*Before Gosain and Harbans Singh, JJ.*

SARDAR LAL SINGH KANG,—*Petitioner.*

*versus*

THE STATE,—*Respondent.*

**Criminal Miscellaneous No. 327 of 1956.**

*Code of Criminal Procedure (Act V of 1898)—Section 561 A—Jurisdiction of High Court to expunge remarks on the conduct of a witness when those remarks are necessary to the conclusion of the trial court or necessary for the arguments—Right of trial court to make damaging observations and the circumstances under which the High Court would normally expunge such remarks stated.*

*Held*, that section 561 A confers no new powers upon the High Court and that it merely safeguards all powers which already existed in the High Court, and that the jurisdiction to judicially correct the judgment of the trial Court, therefore, can be exercised on an application made under this section even if no appeal or revision is before the High Court either because the person complaining about the adverse remarks in the judgment of the trial court is not a party to the proceedings or because no appeal or revision lies from such a judgment, for example, where the proceedings have resulted in favour of the persons against whom the disparaging remarks have been made.

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*Held*, that with regard to the right of the trial Court to make damaging observations and the circumstances