and in substance this claim has been rejected by the appellate tribunal on the ground that sufficient material has not been placed before it by the appellant on which the claim could be examined and granted. In such a case we do not see how we can interfere in favour of the appellant. The present decision will not preclude the appellant from making a similar claim in future and justifying it by leading proper evidence.

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

Appeal dismissed.

THE BRIHAN MAHARASHTRA SUGAR SYNDICATE LTD.

v.

JANARDAN RAMCHANDRA KULKARNI AND OTHERS

1960

February, 22

(S. K. DAS, A. K. SARKAR AND M. HIDAYATULLAH, JJ.)

Company Law—Proceedings pending under the repealed Act—If and when could be continued—Indian Companies Act, 1913, (VII of 1913) s. 153-C—Companies Act, 1956, (1 of 1956) ss. 10 and 647.

The respondent had made an application under s. 153-C of the Companies Act, 1913, with an alternative prayer for winding up against the appellant company, to the District Judge, Poona, who had been authorised under the Act to exercise jurisdiction. While the application was pending the Companies Act, 1913, was repealed by the Companies Act, 1956. The appellant company thereupon applied to the District Judge to dismiss the application on the ground that he had ceased to have any jurisdiction to deal with the application on the repeal of the Companies Act of 1913.

Held, that s. 6 of the General Clauses Act preserved the jurisdiction of the District Judge to deal with the application under s. 153-C of the Indian Companies Act of 1913, notwithstanding the repeal of that Act.

Section 647 of the Companies Act, 1956 did not indicate any intention to affect the rights under the Indian Companies Act of 1913, for s. 658 of the Companies Act of 1956 made s. 6 of the General Clauses Act applicable notwithstanding anything contained in s. 647 of that Act.

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Section 24 of the General Clauses Act does not put an end to any notification. It does not therefore cancel the notification issued under the Indian Companies Act of 1913 in so far as that notification empowered the District Judge to exercise jurisdiction under s. 153-C of the Indian Companies Act of 1913 even though under s. 10 of the Companies Act of 1956, a District Judge can no longer be empowered to exercise jurisdiction under (a) sections 397 to 407 of the Companies Act, 1956, which correspond to s. 153-C of the Indian Companies Act, 1913 or (b) in respect of the winding up of a company with a paid up share capital of not less than Rs. 1,00,000/- which the appellant company was.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 513 of 1958.

Appeal by special leave from the judgment and order dated November 20, 1957, of the Bombay High Court in First Appeal No. 600 of 1956, arising out of the judgment and order dated October 17, 1956, of the District Judge, Poona, in Misc. Petition No. 2 of 1956.

H. D. Banaji, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra,* for the appellant.

A. V. Viswanatha Sastri, Sorab N. Vakil, B. K. B. Naidu and *I. N. Shroff,* for respondents Nos. 1 and 2.

1960. February, 22. The Judgment of the Court was delivered by

Sarkar J.

SARKAR, J.—Respondents Nos. 1 to 4 are shareholders in the company which is the appellant in this case. They made an application against the appellant and its directors under s. 153-C of the Companies Act, 1913 before that Act was repealed on April 1, 1956, as hereinafter mentioned, for certain reliefs which it is not necessary to state. This Act will be referred to as the Act of 1913. This application had been made to the Court of the District Judge of Poona which Court had been empowered to exercise jurisdiction under the Act of 1913 by a notification issued by the Government of Bombay under s. 3(1) of that Act. Before the application could be disposed of by the District Judge, Poona, the Act of 1913 was repealed and re-enacted on April 1, 1956, by the Companies Act of 1956, which will be referred to as the Act of 1956.

On or about June 28, 1956, the appellant made an application to the District Judge of Poona for an order dismissing the application under s. 153-C of the

Act of 1913 on the ground that on the repeal of that Act the Court had ceased to have jurisdiction to deal with it. The District Judge of Poona dismissed this application. The appellant's appeal to the High Court of Bombay against this dismissal also failed. Hence the present appeal.

Section 644 of the Act of 1956 repeals the Act of 1913 and certain other legislation relating to companies. Sections 645 to 657 of the Act of 1956 contain various saving provisions. Mr. Banaji appearing for the appellant contended that the proceeding before the District Judge of Poona under s. 153-C of the Act of 1913 had not been saved by any of these provisions. We do not consider it necessary to pronounce on this question for it seems to us clear that that proceeding can be continued in spite of the repeal of the Act of 1913 in view of s. 6 of the General Clauses Act. Section 658 of the Act of 1956 expressly provides that, "The mention of particular matters in ss. 645 to 657 or in any other provision of this Act shall not prejudice the general application of s. 6 of the General Clauses Act, 1897 (X of 1897), with respect to the effect of repeals." Mr. Banaji said that s. 658 had been enacted *ex abundante cautela*. Be it so. Section 6 of the General Clauses Act none the less remains applicable with respect to the effect of the repeal of the Act of 1913.

Section 6 of the General Clauses Act provides that where an Act is repealed, then, unless a different intention appears, the repeal shall not affect any right or liability acquired or incurred under the repealed enactment or any legal proceeding in respect of such right or liability and the legal proceeding may be continued as if the repealing Act had not been passed. There is no dispute that s. 153-C of the Act of 1913 gave certain rights to the shareholders of a company and put the company as also its directors and managing agents under certain liabilities. The application under that section was for enforcement of these rights and liabilities. Section 6 of the General Clauses Act would therefore preserve the rights and liabilities created by s. 153-C of the Act of 1913 and a continuance of the proceeding in respect thereof would be

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competent in spite of the repeal of the Act of 1913, unless of course a different intention would be gathered.

Now it has been held by this Court in *State of Punjab* v. *Mohar Singh* (1) that s. 6 applies even where the repealing Act contains fresh legislation on the same subject but in such a case one would have to look to the provisions of the new Act for the purposes of determining whether they indicate a different intention. The Act of 1956 not only repeals the Act of 1913 but contains other fresh legislation on the matters enacted by the Act of 1913. It was further observed in *State of Punjab* v. *Mohar Singh* (1) that in trying to ascertain whether there is a contrary intention in the new legislation, "the line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them."

The question then is whether the Act of 1956 indicates that it was intended thereby to destroy the rights created by s. 153-C of the Act of 1913. Mr. Banaji said that s. 647 of the Act of 1956 indicates an intention to destroy the rights created by s. 153-C of the Act of 1913. We find nothing there to support this view. That section only says that where the winding up of a company commences before the commencement of the Act of 1956, the company shall be wound up as if that Act had not been passed, but s. 555(7) of the Act of 1956 will apply in respect of moneys paid into the Companies Liquidation Account. All that this section does is to make the provisions of the repealed Act applicable to the winding up notwithstanding the repeal. The provisions of s. 555(7) need not be referred to as they do not affect the question. Section 647 of the Act of 1956 therefore indicates no intention that the rights created by s. 153-C of the Act of 1913 shall be destroyed. Nor is an argument tenable that since by s. 647 the Act of 1956 expressly makes the repealed Act applicable to a winding up commenced under it, it impliedly indicates that in other matters the repealed Act cannot be resorted to, for, in view of s. 658 of the Act of 1956,

(1) [1955] 1 S.C.R. 893.

the mention of a particular matter in s. 647 would not prejudice the application of s. 6 of the General Clauses Act; in other words, nothing in s. 647 is to be understood as indicating an intention that s. 6 of the General Clauses Act is not to apply. On the other hand, the parties are agreed that the provisions of s. 153-C of the Act of 1913 have been substantially re-enacted by the Act of 1956 and this would indicate an intention not to destroy the rights created by s. 153-C.

Mr. Banaji then drew our attention to s. 10 of the Act of 1956 and s. 24 of the General Clauses Act. Section 10 of the Act of 1956 corresponds to s. 3 of the Act of 1913 and deals with the jurisdiction of Courts. Under s. 10 the Central Government may empower a District Court to exercise jurisdiction under the Act, not being the jurisdiction conferred among others by ss. 397 to 407 nor in respect of the winding up of companies with a paid up share capital of not less than Rs. 1,00,000. Sections 397 to 407 of the Act of 1956, it is agreed, contain substantially the provisions of s. 153-C of the Act of 1913. It has also to be stated that the paid up capital of the appellant is more than Rs. 1,00,000 and the application under s. 153-C of the Act of 1913 contained a prayer in the alternative for the winding up of the appellant. Section 24 of the General Clauses Act provides that where any Act is repealed and re-enacted with or without modifications, then, unless it is otherwise expressly provided, any notification issued under the repealed Act shall, so far as it is not inconsistent with the provisions re-enacted, continue in force and be deemed to have been issued under the provisions so re-enacted unless and until it is superseded by a notification issued under those provisions.

Mr. Banaji points out that in view of s. 10 of the Act of 1956 a District Court can no longer be empowered to deal with an application of the kind made to the District Judge of Poona, as that application asks for reliefs similar to those contemplated by ss. 397 to 407 of the Act of 1956 and also asks for the winding up of a company whose paid up capital exceeds Rs. 1,00,000 and power to deal with such an

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application cannot now be given to a District Court. He, therefore, says that the notification issued under the Act of 1913 empowering the District Judge of Poona to deal with the application would be inconsistent in this respect with the provisions of the Act of 1956 and could not in view of s. 24 of the General Clauses Act be deemed to continue in force after the repeal of the Act of 1913. Hence it is contended that the notification has ceased to have any force and the District Judge of Poona has no longer any jurisdiction to hear the application. It is also said that this shows that the Act of 1956 indicates that the rights acquired under the Act of 1913 would come to an end on its repeal.

We are unable to accept these contentions. Section 10 of the Act of 1956 deals only with the jurisdiction of courts. It shows that the District Courts can no longer be empowered to deal with applications under the Act of 1956 in respect of matters contemplated by s. 153-C of the Act of 1913. This does not indicate that the rights created by s. 153-C of the Act of 1913 were intended to be destroyed. As we have earlier pointed out from *State of Punjab* v. *Mohar Singh* (1), the contrary intention in the repealing Act must show that the rights under the old Act were intended to be destroyed in order to prevent the application of s. 6 of the General Clauses Act. But it is said that s. 24 of the General Clauses Act puts an end to the notification giving power to the District Judge, Poona to hear the application under s. 153-C of the Act of 1913 as that notification is inconsistent with s. 10 of the Act of 1956 and the District Judge cannot, therefore, continue to deal with the application. Section 24 does not however purport to put an end to any notification. It is not intended to terminate any notification; all it does is to continue a notification in force in the stated circumstances after the Act under which it was issued, is repealed. Section 24 therefore does not cancel the notification empowering the District Judge of Poona to exercise jurisdiction under the Act of 1913. It seems to us that since under s. 6 of the General Clauses Act the proceeding in respect of the application under s. 153-C

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of the Act of 1913 may be continued after the repeal of that Act, it follows that the District Judge of Poona continues to have jurisdiction to entertain it. If it were not so, then s. 6 would become infructuous.

For these reasons we think that the appeal must fail and it is therefore dismissed with costs.

Appeal dismissed.

SHRI BALWAN SINGH

v.

SHRI LAKSHMI NARAIN & OTHERS

(B. P. SINHA, C.J., JAFER IMAM, A. K. SARKAR, K. N. WANCHOO AND J. C. SHAH, JJ).

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February, 23

Election Petition—Corrupt Practice—Hiring vehicle for conveyance of electors—Pleadings—Particulars of contract of hiring, if necessary—Representation of the People Act, 1951, (43 of 1951), ss. 83(1)(b), 90(3) and 123(5).

The first respondent filed an election petition for an order that the election of the appellant be declared void on the ground that the appellant had committed the corrupt practice under s. 123(5) of the Representation of the People Act, 1951, in that he had hired a tractor for conveying women electors from their houses to places of polling and back. By an amendment application the first respondent gave particulars about the conveying of voters, but he did not give any particulars regarding the contract of hiring nor did the appellant ask for such particulars. At the trial the first respondent led evidence in respect of the contract of hiring and the appellant raised no objection to the relevance of that evidence. The Election Tribunal dismissed the petition but on appeal the High Court held the charge proved and declared the election of the appellant void. The appellant contended that the election petition ought to have been dismissed because particulars of the contract of hiring which was an essential ingredient of the corrupt practice had not been given.

Held, (per Sinha C. J., Jafer Imam, K. N. Wanchoo and J. C. Shah, JJ), that the corrupt practice under s. 123(5) was the conveying of electors to and from the polling station and not the contract of hiring. If the election petition gave particulars about the use of a vehicle for conveying of electors to and from the polling station, the failure to give particulars of the contract of hiring, as distinguished from the fact of hiring, did not render the petition defective. An election petition was not liable to be