ALLAHABAD HIGH COURT

Seth Jugmendar Das

Vs.

State (Allahabad)

Criminal Revn. No. 981 of 1950

(Desai, J.)

13.04.1951

JUDGMENT

Desai, J.

1. The applicants are being prosecuted under Section 120B, Indian Penal Code and Rules 81(4) and 121, Defense of India Rules, for entering into a conspiracy and infringing the provisions of the Non-ferrous Metals Control Order of 1942. They are said to have committed the offence in the years 1943 to 1945. The offence remained under investigation for a long period and the prosecution was launched against them on 16.1.1950. On 19.4.1950 they pressed before the trial Ct. that their prosecution could not be continued for various reasons, the most important being that the Defense of India Act and Rules have expired and the Govt. of India Act, 1935 has been repealed by the Constitution The trial Ct. held that there was no bar to the continuance of the prosecution and refused their request to quash the proceedings. They went up in revision against this order to the Ses. J. The learned Sess. J., contented himself with pouring encomia on the trial Ct. for its elaborate order and refused to do anything in the matter. So they have come up to this Ct. in revision.

2. The control order that is said to have been infringed by the applicants was made in exercise of the powers conferred by the Defense of India Rules framed by the Central Govt. in exercise of the powers conferred upon them by the Defense of India Act. The Defense of India Act itself is deemed to have been passed by the Central Legislature in exercise of the powers conferred by Section 102, Govt. of India Act, 1935. Section 102 has been amended by the British Parliament twice. The provision in the original Act was to the effect that if the Governor-General declared by Proclamation that a grave emergency existed threatening the security of India, the Central Legislature had the power to make laws for a Province or any part thereof with respect to any of the matters of List II (the Provincial Legislative List), and that a law made by the Central Legislature in exercise of its power would cease to have effect on the expiration of a period of six

months after the Proclamation ceasing to operate, "except as respects things done or omitted to be done before the expiration of the said period."

3. The India (Proclamation of Emergency) Act 1945 (9 and 10 Geo. 6. C. 23) passed on 14-2-46 amended Section 102 by permitting the Central Legislature to make laws with respect to any matter not enumerated in any of the three Lists; in other words, the amendment vested the residuary power during the continuance of an Emergency Proclamations in the Central Legislature. The amendment was given restrospective effect; it was deemed to have come into operation on the commencement of Part III of the Govt. of India Act. The second amendment was effected through the India (Central Govt. and Legislature) Act 1946 (9 and 10 Geo. 6. C. 39) passed on 26.3.1946. The effect of this amendment was that a law made by the Central Legislature, partly in exercise of special powers conferred by Section 102, would cease to have effect only to the extent of its incompetency, on the expiration of six months after the revocation or cancellation of the Proclamation. If the Central Legislature, during the continuance of a proclamation of Emergency made a law dealing with matters included in Lists I and II, then on the expiry of six months after the revocation of the Proclamation, the law relating to the matters of Lists II only would cease to have effect and the remaining law in respect to matters of List I would continue to be in effect.

4. On 3.9.1939 the Governor-General issued a Proclamation of Emergency stating that a grave emergency had arisen threatening the security of India. The Central Legislature thereupon became invested with the power of Section 102 to make laws with regard to any matter regardless of Lists. In exercise of this power it enacted the Defense of India Act,

> "to provide for special measures to ensure the public safety and interest and Defense of British India and for the trial of certain offences".

The Act came into force at once and was to remain in force "during the continuance of the present war and for a period of six months thereafter". Section 2 of it empowered the Central Govt. to make rules for securing the Defense of India and the public safety the efficient prosecution of the war and for maintaining essential supplies and services. So the Defense of India Rules were made by the Central Govt. Rule 81 empowered the Central and Provincial Govts. to make orders providing for various matters and laid down punishment for contravening all such orders. The Control Order in question was made by the Central Govt. in exercise of this power. Trade and commerce within the Province; production, supply and distribution of goods; and development of industries were matters included in List II, Items 27 and 29. If the Defense of India Act contained law in respect of these matters, that law, having been enacted by the Central Legislature in exercise of its power under Section 102, was to cease to operate on the expiration of six months after the Proclamation was revoked, except as respects things done or omitted to be done. The war terminated on 1.4.1946 and on the same day the Governor-General revoked the Proclamation of Emergency. Consequently, the whole Defense of India Act should

have ceased to be in force on 1-10-46 by virtue of its Section 1(4). The incompetent part of it should have ceased to be in force even under Section 102(4), Govt. of India Act. Section 102(4) would not have affected the competent part, but it was affected by Section 1(4) of the Act itself.

5. Section 317, Govt. of India Act, provided for the continuance in operation of certain provisions of the earlier and repealed Govt. of India Act 1915; those provisions are contained in Schedule 9. Para 72 in that Schedule was to the effect that the Governor-General might in an emergency make ordi
names "for the peace and good Govt. of the British India", that any ordinance so made was to have the like force of law as an Act passed by the Central Legislature for a space of not more than six months from its promulgation and that the power was subject to the like restrictions as the power of the Central Legislature to make laws. This section was amended by the British Parliament through the India and Burma (Emergency Provisions) Act 1940 (3 and 4 Geo. 6. C. 33). Section 1(3) of it removed the words "for the space of not more than six months from its promulgation" in respect of ordinances made between 27-6-40 and the date to be fixed by His Majesty as the date of the end of the emergency. His Majesty declared 1-4-46 as such date. The result was that there was no statutory restriction on the duration of an ordinance made by the Governor General in the period between 27.6.1940 and 1.4.1946; it was to remain in force for a period mentioned in itself or till its repeal. On 30.3.1946, the Governor General made the Defense of India (Second Amendment) Ordinance No. XII of 1946. The grave emergency that had arisen on 3.9.1939 was still continuing on 30.3.1946 (it continued for one day more). The Governor General had, therefore, power to make the Ordinance. The Ordinance amended Section 1(4) of the Defense of India Act by adding a saving clause, almost in the same words as Section 6(a), (b), (c), (d) and (e), General Clauses Act and its concluding words. Section 6, General Clauses Act, deals with the effect of the repeal of a Statute. The expiry of a Statute is different from the repeal of a statute and Section 6 has no application to the expiry of a statute. The Defense of India Act was to expire with effect from 1-10-46. It was not intended to be repealed. Had it been allowed to expire, Section 6, General Clauses Act, would not have applied. So Section 1(4) of it was amended in order to make Section 6, General Clauses Act, applicable as if the Act were repealed. The amended provision of Section 102(4), Govt. of India Act, saved the effect "as respects anything done or omitted to be done" of the incompetent part of the Defense of India Act, but not that of the competent part which was not governed by that provision at all. If there were no saving clause in the Defense of India Act, the effect of the competent part would not have been saved after the expiry of the Act. That seems to be the reason why the Governor-General issued the Ordinance in spite of the saving clause in Section 102(4). The Ordinance having been made between 27-6-40 and 1.4.1946 and there being nothing in it about its duration, it was to remain in force until repealed.

6. The Dominion Legislature, that took the place of Central Legislature, passed the Repealing and Amending Act 1947 (Act No. II of 1948), repealing the Defense of India Act and the Ordinance No. XII of 1946 among other Acts and Ordinances. It contains the saving clause in

Section 3 to the effect that the repeal "of any enactment" by it was not to affect any other enactment in which such enactment has been applied, incorporated or referred to and that the Act was not to affect toe effect of consequences of anything already done or suffered or any obligation or liability acquired or incurred, or any remedy or proceeding in respect thereof, or the proof of any past act or thing, or revive or restore any right, restriction, exemption or other matter or thing that had ceased to have effect under the repealed enactment. The saving Clause undoubtedly permitted prosecution for offences committed under the repealed Defense of India Act (provided the Act was repealed by it and had not expired by efflux of time). How it affects the provisions of the Ordinance will be dealt with later.

7. Article 395 of the Constitution repealed the Govt. of India Act, 1935, with effect from 26.1.1950. Though the Govt. of India Act has been repealed, all the law in force in India just before 26-1-50 is to continue in force; see Article 372 (1). The President is authorised by sub clause (2) of the Article to make such adaptations and modifications of such law as may be necessary or expedient for the purpose of bringing it into accord with the provisions of the Constitution. The President, accordingly, issued the Adaptation of Laws Order, 1950, on 26.1.1950 adopting the General Clauses Act without any change in Section 6 of it. Clause 27 of the Order lays down that the Order will not affect the previous operation of, or anything done or omitted to be done under the existing law, or any right or privilege or obligation or liability already incurred, or any penalty incurred in respect of any offence already committed against the law. Article 367 makes the General Clauses Act applicable

> "for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India". What is the meaning of this provision is another matter that will be seen presently.

8. That the Defense of India Act was enacted in exercise of the power granted under Section 102, Govt. of India Act, admits of no doubt. If any authority is needed, reference may be made to '*Dhawanji Rawji v. Emperor*[1]*,* and *J. K. Gas Plant Manufacturing Co., v. Emperor AIR 1947 FC 38*'. It included matters of list II as well. This has been recognised in 'J. K. Gas Plant Manufacturing Co. v. Emperor, AIR 1947 FC 38' and 'in *Re : Thiagarayar Chettiar*[2]*,* The trial of certain offences which was one of the matters dealt with by the Defense of India Act, was undoubtedly included in list II. I should have thought that the provision in Section 2 of the Act, though it empowered the Central Govt. to make rules in respect of various matters including those covered by list II, was in pith and substance an enactment not in respect of those matters but in respect of "special measures to ensure the public interest and Defense of British India". The conferment of powers to make rules was in itself an enactment providing for "special measures". But is has been held by the F.C. that the provisions in Section 2 dealt with matters of list II also. I, therefore, proceed on the basis that the Control Order was made by the Central Govt. by virtue of the power conferred by a provision relating to matter of list II, that is, by an incompetent part of the Act, I mean the part that was beyond the ordinary competency of the

Central Legislature. The Act expired on 30.9.1946, together with all rules and orders made thereunder. There is no dispute about this and if necessary the judgment of the Chief Justice of India in the case of 'J. K. Gas Plant Manufacturing Co., AIR 1947 FC 38' at p. 45 may be referred to.

9. When an Act expires or is repealed, it becomes dead for all purposes. It cannot be enforced to determine any right or liability after the date of expiry or repeal; referring to its provisions would be to annul the expiry or repeal. If a right or liability were to be determined by reference to its provisions after the date of expiry or repeal, it would be as good as not expired or repealed. A person contravening a provision of an Act becomes guilty as soon as he contravenes it; but his becoming guilty is not enforcing the Act. The Act would be enforced when he is punished for the guilt. The punishment takes some time to be inflicted and if, in the meantime, the Act expires or is repealed, it cannot be enforced and he cannot be punished. Obviously, if on the date on which he is sought to be punished, the provision of the Act laying down that a person contravening its provision

[1] AIR 1949 Nag134

[2] AIR 1947 Mad 325

would be given such and such punishment is no longer in force, the act of giving the punishment cannot be done. This is the normal effect of the expiry or repeal of an Act. It is, however, open to the Legislature to modify this normal effect; it can do this generally for all Acts or specially for an individual Act. The Indian Legislature has modified the normal effect in respect of all (Central) Acts, but only with regard to their repeal; see Section 6, General Clauses Act. An expiring Act is left to the mercy of the general rule unless a special provision is made in the Act itself or elsewhere. There were two special provisions dealing with the expiry of the Defense of India Act; one was in Section 102(4), Govt. of India Act and the other in Section 1(4), Defense of India Act. Section 2, Defense of India Act, ceased to have effect after 30.9.1946 except as respects things "done or omitted to be done" before that date; vide Section 102(4) as amended.

10. The words "things previously done or omitted to be done" have been recently interpreted by the House of Lords in '*Wicks, v. Director of Public Prosecutions*[3]', In that case Defense Regulations were made by the British Govt. in exercise of the powers granted under the emergency powers (Defense.) Act, 1939. Wicks contravened the Regulations in 1943 by doing acts likely to assist the enemy. The Act expired subsequently in February, 1946, Wicks was prosecuted in May 1946 under the Emergency Powers Act and the question arose whether he could be prosecuted and convicted after the expiry of the Act. The Lord Chancellor (Viscount Simon) pointed out the unreasonableness of the contention put forward on behalf of Wicks that he could not be prosecuted after the expiry of the Act, but did not base the decision on the unreasonableness. The case was governed by the interpretation of Section 11 (3) of the Act itself; if it permitted the prosecution even after the expiry, the prosecution was valid whether reasonable

or not and if it did not, it was invalid, again whether reasonable or not. Section 11(3) of the Act laid down that its expiry "shall not affect the operation thereof as respects things previously done or omitted to be done." The Lord Chancellor observed at p. 206 :

> "When a statute like the Emergency Powers (Defense) Act, 1939, enables an authority to make regulations, a regulation which is validly made under the Act, i.e., which is 'intra vires' of the regulation making authority, should be regarded as though it were itself an enactment."

His Lordship dismissed the contention that the acts done by Wicks in 1943 did not amount to "things previously done" and observed at p. 207 :

> "It is clear that Parliament did not intend sub-sections (3) to expire with rest of the Act, and that its presence in the statute preserves the right to prosecute after the date of expiry".

So the conviction of Wicks was maintained. The interpretation placed by the House of Lords on the words "things previously done" was accepted by our F.C. in the case of 'J. K. Gas Plant Manufacturing Co.', (AIR 1947 FC 38 at p. 47). In *Dawoo Doyal v. Giridhari Laha'* a Bench of the Calcutta H.C. said that the

[3]1947-1 All England Reporter 20. [4](AIR 1950 Cal 214)

words of Section 102 (4), Govt. of India Act were wide enough to authorise the continuation of a proceeding supported by an application filed before 30.9.1946. The acts done by the applicants , in the instant case, in 1943 to 1945, which are said to be in contravention of the Control Order were undoubtedly things done or omitted to be done before 30.9.1946 and Section 2, Defense of India Act, and Rule 81 Defense of India Rules were kept alive by Section 102 (4), Govt. of India Act, as respects them; in other words Section 102 (4) allowed the applicants to be prosecuted and convicted even after 30.9.1946.

11. Ordinance XII was within the competence of the Governor-General as already held in the case of 'Thiagarayan' (AIR 1947 Madras 325). It remained in force for an indefinite period. It added provisions similar to those of Section 6, General Clauses Act, in the Defense of India Act. Under those provisions also the applicants could be prosecuted and convicted after 30.9.1946. It was strenuously contended by Mr. Pathak that when the Defense of India Act expired, it expired into, i.e., together with the added provisions in Section 1(4), that no effect can be given to any provision, not even those in Section 1(4) and that consequently the provisions did not save the effect of things done or omitted to be done. There is no substance in the contention that a saving Clause is out of place in the Act itself. I do not see any reason why the Legislature cannot provide in the Act itself that its expiry would not affect things previously done or omitted to be done. When the Act contains such a saving clause, it means that the Legislature intends the

whole Act except the saving clause to expire. This is how the matter was looked at by the Lord Chancellor in '***Wicks*** *v. Director of Public Prosecutions*[5]*',* That an Act itself can contain the saving clause is clear from Craies on Statute Law, Edn. 4 p.347, quoted in 'J. K. Gas Plant Manufacturing Co.'s case (AIR 1947 FC 38 p. 46.) The Defense of India Act expired by virtue of its own provision in Section 1 and that provision is subject to the exception that the expiry would not affect a liability or penalty already incurred. When the provision about the expiry was itself to be read subject to the saving clause it cannot be argued that the saving clause was without any effect after the expiry. When the Defense of India Act expired, it does not mean that the Act should not be opened or read at all; it only means that its provisions except the saving clause, should not be given effect to. If the saving Clause permits the Ct. to give effect to the provisions in certain circumstances, then the effect must be given in those circumstances.

12. The power of the Governor-General to make an Ordinance was subject to the like restrictions as the power of the Indian or Central Legislature to make laws. Just as the Central Legislature was empowered by Section 102, Govt. of India Act, to make laws in respect of matters not covered by any list or matters covered by List II, so also the Governor-General had the power to make an Ordinance in respect of matters included in List II during the continuance of a proclamation of emergency. The Governor-General had the power to make an Ordinance "in cases of emergency", while the power of the Central Legislature to legislate in respect of matters of List II existed during "a grave emergency". Emergency includes grave emergency; if an emergency existed within the meaning of Section 102, G. I. Act, it was certainly an emergency within the meaning of Para 72 of the earlier Act. The emergency conferred extra powers upon the Central Legislature sufficed to confer extra powers upon the Governor-General. Mr. Pathak

[5]1947-1 All England Reporter 205

argued that when Para 72 laid down that the Ordinance-making power was subject to the like restrictions as the Central Legislature's power to make laws, it only meant that the Ordinance-making power was restricted by the provisions of Sections 99, 100 and 101 and did not have the benefit of the extra power granted by those of Section 102. The restrictions on the Central Legislature's powers cannot be considered divorced from exceptions. During a grave emergency the Central Legislature's power was unrestricted; so during a grave emergency the Governor-General's power also was unrestricted. 'In *Emperor v. Benoari Lal*[6]*', (*the Lord Chancellor observed :

> "On 3.9.1939 the Governor-General had proclaimed that a grave emergency exists and thereupon the Indian Legislature acquired power to make laws with respect to a Province in respect of any of the matters enumerated in the Provincial Legislative List, with the result that the Governor-General acting under Para 72 of Schedule IX, had in case of emergency the same width of legislative powers".

The Defense of India Act was passed under the special provision contained in Section 102 and the Central Legislature had the power to enact it, the Governor-General similarly had the power

to save its effect.

13. The Defense of India Act expired on 30.9.1946, but the Ordinance remained in force. Mr. Pathak thought it incongruous that while the Act expired another legislation amending it should remain in force. Had the Ordinance, instead of amending the Defense of India Act, laid down that its expiry "shall not affect (a) the previous operation of may be imposed as if the Act had not expired", its effect could have continued so long as it remained in force even though the Defense of India Act had expired. But, he argued, when the Ordinance simply amended the Defense of India Act, its purpose was effected as soon as it was made, there remained nothing to be done under it, there was left no question of giving effect to its provisions and when the Act expired, it expired along with the amended provision. I have already explained why when an Act with a saving clause expires, the saving clause remains operative and the remaining provisions only become lifeless. So even if the effect of the Ordinance was to amend Section 1 of the Act by inserting a saving clause, the saving clause remained operative after 30.9.1946, to save the effect of anything done or omitted to be done.

14. Mr. Pathak also contended that a saving clause in an emergency legislation must have constitutional authority and that if an Act cannot be passed today its effect also cannot be continued today. No authority was cited in support of the contention. A saving clause does not stand on the same footing as the Act itself; though an Act has expired, the effect of things done or omitted to be done can be saved. An Act may be dead as regards future acts but can be kept alive as regards past acts; to argue against is nothing but arguing against saving clauses and the provisions of Section 6, General Clauses Act. I see no reason or logic behind the proposition that the incorporation of a saving clause in an emergency legislation is inconsistent with the object of the legislation. When an emergency passes off, the emergency legislation may cease to create future offences, but it does not follow that it wipes off the past offences to this extent that no provision can be made for prosecution and punishment for them. The Ordinance, No. XII, was an emergency legislation and was bound to exist separately from the Defense of India Act. It

[6] AIR 1945 PC 48

does not matter if the Defense of India Act also was an emergency legislation. The emergencies which justified the making of the Ordinance and the enactment of the Act were different and the authorities which made or enacted them also were different. The legislations themselves were governed by different provisions. The Ordinance was governed by one law and was to remain in operation as provided in Para 72, while the Act was governed by another law and was to remain in operation as provided in Section 102, G.I. Act. The two legislations could not always be synchronised. So the Defense of India Act was not amended permanently by the Ordinance. It remained amended only so long as the Ordinance itself remained in force. If the Ordinance was repealed, the amendment was gone. I, therefore, agree with Mr. Uniyal that the Ordinance only deemed the Defense of India Act to be amended, did not physically amend it and existed as an independent legislation, the existence of which did not depend upon that of the Defense of India Act.

15. In the case of 'Thiagarayan Chettiar' (AIR 1947 Madras 325), Happell, J., stated at P. 327 that the Ordinance was not restricted to six months but was

> "to have effect for the period provided in the Ordinance, or, if no period is provided, until the emergency is declared by the Governor-General to have ceased to have effect" and that "it was not intended that it should have an existence independent of the other part of the amended sub-sections or other sections of the Act." Para 72 limited the operation of an Ordinance to six months from its promulgation; the Statute of George VI removed this restriction, but did not insert any provision about its life. Even under Para 72 its life did not depend upon the duration of the emergency. An ordinance promulgated on 1.1.1920 would remain in force up to 30.6.1920 even if the emergency passed off on 2.1.1920. The Govt. of India Act of 1935 made provision for the issue, and the revocation, of a proclamation of emergency; it contemplated definite dates on which an emergency arose and passed off. The earlier Act of 1915, however did not require any promulgation of emergency to be issued and revoked, with the consequence that there could be no definite dates on which an emergency could be said to have arisen and to have passed off. That probably is the reason why Para 72 did not make operation of an Ordinance dependent on the duration of the emergency. I could not find any provision anywhere to justify the remark of Happell, J., that an Ordinance, prescribing no period for its duration, made after the amendment of Para 72 was to remain in force only during the emergency (by which I understand the emergency contemplated by Para 72). I respectfully differ from his view that the Ordinance was not intended to have an independent existence. I see nothing unconstitutional or incongruous or illegal in the Ordinance remaining in force until its repeal on 5.1.1948 by Act No. II of 1948. I am supported in my view by the following observations of their Lordships of the Judicial Committee in the case of 'J. K. Gas Plant Manufacturing Co..' (AIR 1947 FC 38) at P. 44 :"In our opinion the emergency on the happening of which an Ordinance can be promulgated is separate and distinct from and must not be confused with the emergency which occasioned the passing of the Act and the clear effect of the words of the Act, on Section 72, is that Ordinances promulgated under that sub-section during the period specified in Section 3 of the Act, are subject to no time limit as regards their existence and validity, unless imposed by the Ordinances themselves, or other amending or repealing legislation, whether by Ordinance or otherwise."
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> '*Rampal Singh v. Emperor*[7]*',* also decided that the Ordinance was 'intra vires' of the Governor-General. Therefore, up to 5.1.1948 the Defense of India Act would be deemed to have contained the saving clause i.e., offences committed against the Defense of India Act could be prosecuted and punished upto that date.

16. The Defense of India Act had already expired on 30.9.1946 and I do not know how it was repealed by Act II (2) of 1948. No part of it remained in force after 30.9.1946 to be repealed. I considered that its so-called repeal by Act II (2) of 1948 has no meaning and that the saving

clause in Act II (2) of 1948 cannot save the effect of anything to be done or omitted to be done.

17. Act II (2) of 1948 also repealed the Ordinance XII of 1946. The only effect of the Ordinance up to its repeal was that it permitted offences under the D.L Act to be prosecuted and punished. No prosecution against the applicants was started before that date; so nothing can be said to have been done under the Ordinance. The liability of the present applicants to be punished arose under the Defense of India Act and not under the Ordinance which merely extended the period during which they could be prosecuted and punished. Had their prosecution started during the life of the Ordinance or had it been started during the life of the Defense of India Act and been continued during the life of the Ordinance, it could be argued that the continuation of the prosecution was something done, or a liability incurred, under the Ordinance and could be carried on under the saving clause of Act II (2) of 1948. But when no prosecution was launched at all, there was nothing done and there was no liability incurred which could possibly be affected by the repeal of the Ordinance. The saving clause only lays down that the repeal of the Ordinance would not affect certain things which do not include the prolongation of the period during which offences against the Defense of India Act could be prosecuted and punished. It certainly does not further elongate the period. I, therefore, hold that when no prosecution was launched prior to 5.1.1948 nothing in Section 3 of Act II (2) of 1948 allowed it to be launched after that date.

18. The position is that if the applicants could be prosecuted after 30.9.1946, it was only by virtue of Section 102(4), G.I. Act. The Act was repealed by the Constitution. The President was empowered by Article 372 to make such adaptations and modifications of the law in force in India immediately before 26.1.1950 as may be necessary or expedient. Accordingly he adapted the General Clauses Act without any change in Section 6. Article 367 has made the General Clauses Act applicable "for the interpretation of this Constitution". Mr. Pathak drew distinction between "interpretation" and "construction" and urged that Section 6, General Clauses Act, deals with "construction" and not "interpretation" and cannot be applied to the repeal of the Govt. of India Act, by Article 395. Crawford writes in his Statutory Construction, P. 240
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> "Strictly speaking construction and interpretation are not the same, although the two terms are often used interchangeably. Construction, however, to be technically correct, is the drawing of conclusions with respect to subjects that are beyond the direct expression of the text, from elements known and given in the text while interpretation is the process of discovering the true meaning of the language used.

[7](AIR 1948 Pat 229)

When the Ct. goes beyond the language of the Statute and seeks the existence of extrinsic aid in order to determine whether a given case falls within the Statute, it resorts to construction. The distinction, however, between the two processes is often vague, and so far as the Cts. are concerned apparently has little or no importance. Generally the whole matter has been largely relegated to the realm of academic discussion, since for most practical purposes it is sufficient to designate the whole process of ascertaining the legislative intent as either interpretation or

construction. This appears to be the customary judicial practice." The General Clauses Act incorporates many provisions of the Interpretation Act, 1889 (52 and 53 Vic. C. 63). Section 6 is one of them. It is significant that the British Statute is named Interpretation Act, it suggests that the word interpretation is used in the sense of "construction" because otherwise a provision similar to Section 6 would not have found place in an Act dealing with "interpretation". The General Clauses Act is divided into parts with headings. Section 6 occurs in a part under the heading "General Rules of Construction", while definitions occur in a part headed by the words "General definitions". Other headings are "Powers and Function" and "Miscellaneous". There is no heading "Interpretation". When Article 367 makes the Act applicable for the interpretation of the Constitution, it must have referred to the parts under headings "General Definitions" and "General Rules of Construction". There is nothing to indicate that only part under the heading "General Definitions" was intended and not the other part. Apparently, the word "interpretation" has been used in the sense which includes "construction" also. All Acts are to be interpreted in accordance with certain rules which are contained in the Central and Provincial General Clauses Acts. The Constitution would not be interpreted by reference to them without a special provision; hence Article 367 was enacted. I am clear that the General Clauses Act is to be used for all purposes for which it is used in respect of Acts. Having regard to what is said by Crawford, if the Constituent Assembly had intended to apply only Sections 3 and 4 (which contain all the definitions) it would have said so clearly instead of saying that the whole Act applies for the interpretation. '*In Re Keshavan Madhavan Mennon*[8]*'* a Full Bench of the Bombay H C applied Section 6, General Clauses Act, to the interpretation of the Constitution. The decision of the Full Bench has recently been confirmed by the *'S.C.' Keshavan Madhava Menon v. The State of Bombay*[9]*,* the S.C. confirmed it on different grounds, but without overruling the dictum that Section 6, General Clauses Act would have applied if the impugned Act had been deemed to have been repealed by the Constitution.

19. Section 6, General Clauses Act applies where "any Central Act or regulation" repeals "any enactment". The Constitution is not a Central Act or regulation. It is certainly not a regulation and it is not a Central Act as defined in Section 3 (8) (aa), General Clauses Act. The President while adopting the General Clauses Act did not substitute the words "the Constitution" in place of the words "any Central Act or regulation". Article 367 makes the whole Section 6 applicable; it does not permit any alteration in it. Therefore, Section 6 would not apply to the repeal of any enactment by the Constitution. The Govt. of India Act, 1935, is certainly an "enactment". Any Act of the British Parliament amending it is referred to as an "enactment" in Article 395. There are no words in Section 6, General Clauses Act to qualify the words "any enactment", they include all enactments whether passed by the Central Legislature or any other Legislature. They would, therefore, apply to the repeal of the Govt. of India Act also. But that fact is not sufficient

[8](52 Cr LJ 30 Bom)

[9](1951 SCJ 182)

to save the effect of anything done or omitted to be done. For the applicability of Section 6, it ought to have been repealed by any Central Act or regulation. Article 367 does not require one to read "Constitution" for "any Central Act or regulation" wherever those words occur in the

General Clauses Act. Nor does it require one to apply the analogy of Section 6, General Clauses Act to the repeal of any enactment by the Constitution. I therefore, am of the opinion that the repeal of the Govt. of India Act does not save the effect of anything to be done or omitted to be done.

20. Section 102, Govt. of India Act, which was the only provision that permitted the prosecution of the applicants for the offences committed by them has been repealed. The prosecution was certainly launched before the Constitution came into force and while the Govt. of India Act was in force. After the repeal of the Govt. of India Act no provision of it could be enforced. It was an Act passed by the British Parliament and could have no operation in independent India, unless the Constitution provided for its operation. The General Clauses Act does not apply and has not been made applicable by the Constitution. The prosecution is under the Defense of India Act which expired and the law under which it was allowed to continue became dead on 26.1.1950. It must, therefore, be quashed.

21. There have been no decisions directly bearing on the question of the effect of the Constitution. That prosecution for an offence committed against the Defense of India Act prior to 30.9.1946 could be continued even after its expiry, has been settled by numerous decisions such as those in the cases of 'Thiagarayan' (AIR 1947 Madras 325)' 'J. K. Gas Plant Manufacturing Co., (AIR 1947 FC 38), '*Wicks v. Director of Public Prosecutions*[10]*',* and '*Dhawanji Rawji v. Emperor*[11]*',* Reference in this connection may also be made to '*Dawoo Doyal v. Giridhari Laha,*[12]*'* where effect was given to an order made under a Rent Control order which ceased to be operative on the expiry of the Defense of India Act. In '*Amrit Lal v. Govt. of Mysore*[13]*',* an offence against a Mysore Food Order, 1949, read with Rule 81, Defense of India Rules, was committed on 22.11.1949, the accused was convicted, on the coming into the Constitution he applied for the quashing of his conviction on the ground that the law for infringing which he was convicted was inconsistent with the Constitution and his application was rejected.

22. Mr. Pathak also raised the question of the validity of Section 2, Defense of India Act. He argued that it was invalid as being delegated legislation. But in view of what a Bench of this Ct., of which I was a member said in '*State v. Basdeo*[15]*',* he did not press his argument but did not also give it lip.

23. I allow the application and quash the proceedings against the applicants. They are discharged and their bail-bonds are cancelled.
Proceedings quashed.

[10](1947-1 All England Reporter 205) [12](AIR 1950 Cal 214) [15](AIR 1951 All 44)
[11](AIR 1949 Nag 134) [13](AIR 1951 Mys 26)