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August 31.

RAJA NARAYANLAL BANSILAL

v.

MANECK PHIROZ MISTRY AND ANOTHER.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Company—Investigation into affairs of—Inspector appointed under old Act, if can exercise powers under new Act—Constitution—Testimonial compulsion—Whether provisions for production of documents and evidence offend guarantee—Equal protection of the law—If provisions for investigation and production of evidence offend guarantee—Indian Companies Act, 1913 (VII of 1913), s. 138—Indian Companies Act, 1956 (I of 1956), ss. 235, 239, 240, 645 and 646, Constitution of India, Arts. 14 and 20(3).

On November 15, 1954, the Registrar wrote to the company of which the appellant was the Managing Agent under s. 137, Indian Companies Act, 1913, that it had been represented to him that the business of the company was carried on in fraud and called upon it to furnish certain information. On April 15, 1955, the Registrar made a report to the Central Government under s. 137(5) to the effect that in his opinion the affairs of the company were carried on in fraud of contributories and they disclosed an unsatisfactory state of affairs and that a case had been made out for an investigation under s. 138. Thereupon, the Central Government, on November 1, 1955, appointed an Inspector to investigate the affairs of the company and to report thereon. The Inspector was authorised under s. 140 to examine any person on oath, and he wrote to the appellant that he would examine him on oath in relation to the business of the company. On April 1, 1956, the Indian Companies Act, 1913, was repealed by the Indian Companies Act, 1956, which conferred wider and more drastic powers of investigation. On July 26, 1956, the Central Government accorded approval under s. 239(2) of the new Act to the Inspector exercising his powers of investigating into and reporting on the affairs of the company. In May 1957 the Inspector served notices upon the appellant calling upon him to attend his office on the date and the time specified for the purpose of being examined on oath and to produce certain account books and papers relating to the company. The appellant challenged the investigation and contended: (i) that since the Inspector was appointed under the old Act he had no jurisdiction to exercise the powers referable to the provisions of the new Act, (ii) that s. 240 of the new Act which provided for the production of documents and evidence at such investigations offended Art. 20(3) of the Constitution, and (iii) that s. 239 of the new Act which conferred powers on inspectors for investigation and s. 240 offended Art. 14 of the Constitution.

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Held, that the Inspector appointed under s. 138(4) of the old Act must be deemed to have been appointed under s. 235 of the new Act and had authority and power to issue notices under s. 240 of the new Act. Section 645 of the new Act provided that the appointment of an Inspector under the old Act shall, on repeal of the old Act and on coming into force of the new Act, have effect as if it was made under the new Act. Section 646 which provided that nothing in the new Act shall affect the operation of s. 138 of the old Act as respects inspectors was not an exception or proviso to s. 645 and the two sections being saving sections had to be read as independent of and in addition to, and not as exceptions to, each other.

Held, further that s. 240 of Indian Companies Act, 1956, did not offend Art. 20(3) of the Constitution. For invoking the constitutional right against testimonial compulsion guaranteed under Art. 20(3) there must be at the relevant stage a formal accusation against the party pleading the guarantee relating to the commission of an offence which may result in a prosecution. The enquiry undertaken under s. 240 by the Inspector was in substance an enquiry into the affairs of the company; at this stage there was no accusation, formal or otherwise, against any specified individual. The mere fact that a prosecution may utlimately be launched against the alleged offenders would not retrospectively change the complexion or character of the proceedings held by the Inspector when he makes the investigation.

Maqbool Hussain v. *The State of Bombay*, [1953] S.C.R. 730, *S. A. Venkataraman* v. *The Union of India*, [1954] S.C.R. 1150, *M. P. Sharma* v. *Satish Chandra, District Magistrate, Delhi*, [1954] S.C.R. 1077, *Thomas Dana* v. *State of Punjab*, [1959] Supp. 1 S.C.R. 274 and *Mohammed Dastagir* v. *The State of Madras*, [1960] 3 S.C.R. 116, relied on.

Held, further that ss. 239 and 240 of the Indian Companies Act, 1956, did not violate Art. 14 of the Constitution. These sections denied the company and persons in charge of the management of such companies the ordinary protection afforded to witnesses under s. 132 of the Evidence Act and under s. 161(1) and (2) of the Criminal Procedure Code. As they were entrusted with the financial interests of a large number of citizens it was legitimate to treat such companies and their managers as a class by themselves and to provide for necessary safeguards and checks against abuse of power by the managers. The basis of the classification is founded on an intelligible differentia which has a rational relation to the object sought to be achieved.

Shri Ram Krishna Dalmia v. *Justice Tendolkar*, [1959] S.C.R. 297, applied.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 268 of 1959.

Appeal from the judgment and decree dated September 3, 1958, of the former Bombay High Court in Appeal No. 28/1958.

A. V. Viswanatha Sastri, Ganpat Rai and *I. N. Shroff*, for the appellant.

M. C. Setalvad, Attorney-General for India, B. Sen and *T. M. Sen*, for the respondents.

1960. August 31. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—The appellant Raja Narayanlal Bansilal of Bombay is the Managing Agent of a Limited Company named the Harinagar Sugar Mills Limited. By virtue of the power conferred on him by s. 137 of the Indian Companies Act, 1913 (VII of 1913), the Registrar wrote to the mills on November 15, 1954, that it had been represented to him under s. 137(6) that the business of the company was carried on in fraud, and so he called upon the company to furnish the information which he required as set out in a part of his letter (Ex. A). On April 15, 1955, the Registrar made a report (Ex. AA) to the Central Government under s. 137(5) of the said Act. This report showed that according to the Registrar the affairs of the company were carried on in fraud of contributories and they disclosed an unsatisfactory state of affairs. The report pointed out that the appellant was the Managing Agent of the company as well as its promoter, and that it was suspected that under a fictitious name of Bansilal Uchant Account the company was advancing money to the several firms owned by the appellant which were ostensibly purchased from the company's funds. The report further stated that between the years ending in September, 1942 and 1951 about Rs. 19,200 were paid for Harpur Farm and Rs. 39,300 for Bhavanipur Farm, and accounts disclosed that the Uchant Account was chiefly operated upon for purchasing such lands out of the funds of the company though the purchase in fact was for and on behalf of the appellant. The Registrar also added that he had reason to believe that the Managing

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Agent was utilising the property of the company in some cases for his personal gain, and concluded that, in his opinion, a case had been made out for an investigation under s. 138.

On receiving this report, on November 1, 1955, the Central Government passed an order under s. 138(4) of the said Act (Ex. B) appointing the first respondent Maneck P. Mistry, who is a Chartered Accountant, as an inspector to investigate the affairs of the company from the date of its incorporation. The said inspector was asked to point out all irregularities and contraventions of the provisions of the said Act or any other law, and make a full report as indicated in a communication which was separately sent to him. This separate communication (Ex. BB) prescribes the mode of enquiry which should be adopted by inspectors. It requires that while investigating the affairs of companies the inspectors should bear in mind that for a successful prosecution the evidence in support of a charge must be clear, tangible and cogent, and that their reports should specify with reference to the evidence collected during the investigations the points specified under paragraph 2(a) to (e). In the course of their investigation the inspectors are asked to make use of the powers available to them under s. 140 of the said Act including the right to examine a person on oath. The investigation should be conducted in private and the inspectors are not entitled to make public the information received by them during the course of the investigation.

Pursuant to the powers conferred on him by the said order respondent 1 wrote to the appellant intimating to him that he would examine him on oath in relation to the business of the company under s. 140(2) of the said Act (Ex. C). Meanwhile on April 1, 1956, the Companies Act of 1913 (VII of 1913) was repealed by the Companies Act of 1956 (I of 1956). For the sake of convenience we would hereafter refer to the repealed Act as the old Act and the Act which came into force on April 1, 1956, as the new Act. On July 26, 1956, the Central Government purported to exercise its power under s. 239(2) of the new Act and

accorded approval to respondent 1 exercising his powers of investigating into, and reporting on, the affairs of the appellant including his personal books of accounts as well as the affairs of the three concerns specified in the order. These three concerns are M/s. Narayanlal Bansilal, who are the Managing Agents of Harinagar Sugar Mills, the Shangrila Food Products Limited and Harinagar Cane Farm. It appears that the appellant is the proprietor of the firm of Narayanlal Bansilal. After this order was passed respondent 1 served upon the appellant the four impugned notices (Ex. E collectively) on May 9, 1957, May 16, 1957, May 29, 1957 and June 29, 1957, respectively. These notices are substantially identical in terms, and so it would be sufficient for our purpose to set out the purport of one of them. The first notice called upon the appellant to attend the office of respondent 1 on the date and at the time specified for the purpose of being examined on oath in relation to the affairs of the company, and to produce before respondent 1 all the books of accounts and papers relating to the said company as mentioned in the notice. The appellant was further told that in default of compliance with the requisition aforesaid necessary legal steps would be taken without further reference to him. The notice contains a list of twelve items describing the several documents which the appellant was required to produce before respondent 1.

After these notices were served on the appellant he filed a petition (No. 201 of 1957) in the Bombay High Court and prayed that the High Court should issue a writ of certiorari or any other appropriate direction, order or writ under Art. 226 of the Constitution calling upon respondent 1 to produce the records of the case relating to the notices in question and to set aside the said notices, the proposed examination of the appellant and the interim report made by him. It further prayed for a writ of prohibition or any other appropriate direction, order or writ restraining respondent 1 from making any investigation under the said notices and from exercising any powers of investigation under s. 239 and/or s. 240 of the new Act and/or

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from investigating into the affairs of any persons or concerns specified in the petition. The petitioner claimed these writs mainly on two grounds. He first alleged that since respondent 1 had been appointed under the old Act he had no jurisdiction to exercise powers referable to the relevant provisions of the new Act. This ground assumed that the said relevant provisions of the new Act are valid, but it is urged that the powers referable to the said provisions are not available to respondent 1 since he was appointed under the old Act. The other ground on which the writs were claimed challenges the vires of ss. 239 and 240 of the new Act. This challenge assumed an alternative form. It is argued that s. 240 offends against the constitutional guarantee provided by Art. 20(3) of the Constitution and it is also urged that certain portions of ss. 239 and 240 offend against another constitutional guarantee provided by Art. 14 of the Constitution. It is thus on these three contentions that the petitioner claimed appropriate writs by his petition before the Bombay High Court. These pleas were resisted by the Union of India which had been joined to the proceedings as respondent 2. Mr. Justice K. T. Desai, who heard the petition, rejected the contentions raised by the petitioner, and held that no case had been made out for the issue of any writ. This decision was challenged by the appellant before the Court of Appeal in the Bombay High Court; the Court of Appeal agreed with the view taken by Desai, J., and dismissed the appeal. Thereupon the appellant applied for and obtained a certificate from the High Court, and it is with the said certificate that he has come to this Court by his present appeal. On his behalf Mr. Viswanatha Sastri has raised the same three points for our decision.

Let us first examine the question whether or not the first respondent has jurisdiction to exercise the powers under the relevant provisions of the new Act. It is common ground that if respondent 1's powers to hold the investigation in question are to be found in the relevant provisions of the old Act and not those of the new Act the impugned notices issued by him would be

without authority and jurisdiction. In dealing with this question it is necessary to examine the broad features of the relevant sections of the two Acts.

We will begin with the old Act. Section 137 of the old Act deals with investigation by the Registrar. Section 137(1) provides that where the Registrar on perusal of any document which a company is required to submit to him is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate he may, by a written order, call on the company to furnish in writing the necessary information or explanation within the time to be specified in the order. Section 137(5) requires the Registrar to make a report in writing to the Central Government if no information is supplied to him within the specified time, or if the information supplied to him appears to him to disclose an unsatisfactory state of affairs, or does not disclose a full and fair statement of the relevant matters. Thus s. 137(1) to (5) deal with the investigation which the Registrar is empowered to make on a persual of the document submitted to him by a company under the provisions of this Act. Section 137(6) deals with a case where if it is represented to the Registrar on materials placed before him by any contributory or creditor that the business of a company is carried on in fraud or in fraud of its creditors or in fraud of persons dealing with the company or for a fraudulent purpose, he may, after following the procedure prescribed in that behalf, call for information or explanation on matters to be specified in his order within such time as he may fix, and when such an order is passed the provisions of s. 137(2) to (5) would be applicable. This sub-section provides that if at the end of the investigation the Registrar is satisfied that the representation on which he took action was frivolous or vexatious he shall disclose the identity of the informant to the company. This provision is obviously intended as a safeguard against frivolous or vexatious representations in respect of the affairs of any company. The provisions of this section are substantially similar to the provisions of s. 234 of the new Act.

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Section 138, which deals with investigation of affairs of companies by inspectors, authorises the Central Government to appoint one or more competent inspectors to investigate the affairs of any company and report thereon in such manner as the said Government may direct. The appointment of competent inspectors can be made by the Central Government in four classes of cases as specified in s. 138(1) to (4). It would be relevant to refer to two of these cases. Under s. 138(1) a competent inspector can be appointed in the case of a banking company having a share capital on the application of members holding not less than one-fifth of the shares issued, and under s. 138(4) in the case of any company on a report by the Registrar under s. 137(5). This section substantially corresponds to s. 235 of the new Act.

The other sections of the old Act to which reference must be made are ss. 140, 141 and 141A. Section 140(1) imposes upon all persons who are or have been officers of the company an obligation to produce before the inspectors all books and documents in their custody or power relating to the company. Section 140(2) empowers the inspector to examine on oath any such person, meaning a person who is or has been an officer of the company in relation to the business of the company and to administer an oath to him. Section 140(3) provides that if a person refuses to produce a book or a document or to answer any question he shall be liable to a fine not exceeding Rs. 50 in respect of each offence. Section 141 provides that on the conclusion of an investigation the inspectors shall report their opinions to the Central Government, and shall forward a copy of their report to the registered office of the company; and it also provides that a copy of the said report can be delivered at their request to the applicants for the investigation. Then we have s. 141A which deals with the institution of prosecutions. Section 141A(1) provides that if from any report made under s. 138 it appears to the Central Government that any person has been guilty of any offence in relation to the company for which he is criminally liable the Central Government shall refer the

matter to the Advocate-General or the Public Prosecutor. Section 141A(2) lays down that if the law officer who is consulted under (1) considers that there is a case in which prosecution ought to be instituted he shall cause proceedings to be instituted accordingly. That in brief is the scheme of the relevant provisions of the old Act.

We will now examine the scheme of the relevant provisions of the new Act. It has already been noticed that ss. 234 and 235 of the new Act are substantially similar to ss. 137 and 138 of the old Act. Section 239 of the new Act provides for the powers of the inspectors to carry on investigation into the affairs of related companies or of managing agent or associate. The sweep of the enquiry authorised by this section is very much wider than that under the corresponding section of the old Act. Sub-section (1) of this section authorises an inspector to investigate the affairs of a company and also the affairs of any other body corporate or person specified in cls. (a) to (d) if he thinks it necessary so to do. These clauses include several cases of body corporate which may have any connection direct or indirect, immediate or remote, with the affairs of the company whose affairs are under investigation. It is unnecessary for our purpose in the present appeal to enumerate the said cases serially or exhaustively. It is conceded that the three other persons who have been called upon by respondent 1 to produce documents and give evidence fall within the purview of s. 239. As a result of the provisions of s. 239(1) the inspector has to report not only on the affairs of the company under investigation but also on the affairs of other bodies or persons who have been compelled to give evidence and produce documents during the course of the enquiry. The only safeguard provided against a possible abuse of these extensive powers is that in the case of any body corporate or person referred to in cls. (b)(ii), (b)(iii), (c) or (d) of subs. (1) the inspector shall not exercise his relevant power without first having obtained the prior approval of the Central Government thereto.

Section 240 of the new Act imposes an obligation

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on the corporate bodies and persons in respect of which or whom investigation is authorised by s. 239 to produce all books and papers and to give all assistance in connection with the said investigation; that is the result of s. 240(1). Section 240(2) empowers the inspector to examine on oath any of the persons referred to in sub-s. (1) in relation to the relevant matters as specified. Section 240(3) deals with a case where a person refuses to comply with the obligation imposed on him by s. 240(1) or (2); and it provides that in such a case the inspector may certify the refusal under his hand to the court, and the court may thereupon enquire into the case, hear witnesses who may be produced against or on behalf of the alleged offender, consider any statement which may be offered in defence, and punish the offender as if he had been guilty of contempt of the court. Section 240(4) deals with a case where the inspector thinks it necessary for the purpose of his investigation that a person whom he has no power to examine on oath should be examined, and it provides that in such a case he may apply to the court, and the court may, if it thinks fit, order that person to attend and be examined on oath before it on any matter relevant to the investigation. This sub-section provides for the procedure to be followed in examining such a witness. Section 240(5) lays down that notes of any examination under sub-s. (2) or (4) shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used as evidence against him. Having thus made elaborate provisions for the production of documents and evidence in the course of the investigation by the inspector, s. 241 deals with the inspectors' report and provides that inspectors may, and if so directed by the Central Government shall, make interim reports to that Government, and on the conclusion of the investigation shall make a final report to it. Section 241(2) provides for the supply of the copy of the said report to the several parties concerned as specified in cls. (a) to (e).

That takes us to s. 242 which deals with prosecution. Section 242(1) provides inter alia that if from

any report made under s. 241 it appears to the Central Government that any person has in relation to the company been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence, and it imposes on all officers and agents of the company, except those prosecuted, to give the Central Government all assistance in connection with the prosecution which they are reasonably able to give. That broadly stated is the position with regard to the relevant provisions of the new Act.

Mr. Sastri has drawn our pointed attention to the fact that the scope and nature of the enquiry authorised by the new Act are very much wider than under the old Act, and he has characterised the relevant powers conferred on the investigating inspectors as draconian. He, therefore, contends that unless it is established that these powers are available to the inspector appointed under the relevant provisions of the old Act the impugned notices must be set aside; and his argument is that these powers are not available to the inspector appointed under the old Act. The decision of this question will depend mainly on the construction of ss. 645 and 646 of the new Act.

Section 644 provides for the repeal of the enactments mentioned in Schedule XII; the old Act is one of the enactments thus repealed. Ordinarily the effect of the repeal of the old Act would have been governed by the provisions of s. 6 of the General Clauses Act (10 of 1897), but in the case of the new Act the application of the said section is subject to the provisions of ss. 645 to 657 of the Act; that is the effect of s. 658 which provides that the mention of particulars in ss. 645 to 657 or in any other provisions of this Act shall not prejudice the general application of s. 6 of the General Clauses Act, 1897, with respect to the effect of repeals. In other words, though s. 6 of the General Clauses Act will generally apply, its application will be subject to the provisions contained in ss. 645 to 657; this position is not disputed.

It is now necessary to consider s. 645. It reads thus:

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"Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act."

The effect of this section is clear. If an inspector has been appointed under the relevant section of the old Act, on repeal of the old Act and on coming into force of the new Act, his appointment shall have effect as if it was made under or in pursuance of the new Act. Indeed it is common ground that if s. 645 had stood alone and had not been followed by s. 646 there would have been no difficulty in holding that the inspector appointed under the old Act could exercise his powers and authority under the relevant provisions of the new Act, and the impugned notices would then be perfectly valid. Incidentally we may refer to the provisions of s. 652 in this connection. Under this section any person appointed to any office under or by virtue of any previous company law shall be deemed to have been appointed to that office under this Act.

It is, however, urged that the authority of the inspector which is in dispute is governed by s. 646. This section provides:

"Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (VII of 1913), as respects inspectors, or as respects the continuation of an inspection begun by inspectors, appointed before the commencement of this Act; and the provisions of this Act shall apply to or in relation to a report of inspectors appointed under the said section 138 as they apply to or in relation to a report

of inspectors appointed under section 235 or 237 of this Act."

The argument is that the expression "nothing in this Act" includes s. 645 and so s. 646 should be read as an exception or proviso to s. 645; and if that is so, all matters covered by s. 138 of the old Act must continue to be governed by the said Act and not by any of the provisions of the new Act. We are unable to accept this argument. In appreciating the effect of the provisions of s. 646 it is necessary to bear in mind that it occurs in that part of the new Act which deals with repeals and savings. Sections 645 to 648 are the saving sections, and ordinarily and in the absence of any indication to the contrary these saving clauses should be read as independent of, and in addition to, and not as providing exceptions to, one another. It is significant that whereas s. 646 provides for the continuance of the operation of s. 138 it does not make a corresponding provision for the continuance of the operation of s. 140 of the old Act which deals with the powers of the inspector to call for books and to examine parties. Besides, it may perhaps not be accurate to suggest that having regard to the provisions of s. 645, s. 646 is wholly redundant. It would be possible to take the view that cases falling under s. 138(1) of the old Act are intended to be covered by s. 646 as they would not be covered by s. 645. In regard to the case of a banking company covered by s. 138(1) s. 646 will come into operation and that may be one of the reasons for which s. 646 was enacted. It may be that the case of the banking company may also be covered by s. 35 of the Banking Companies Act 10 of 1949, but since s. 138(1) applied to the said case until the old Act was repealed the Legislature may have, as a matter of caution, thought it necessary to provide for the continuance of the operation of s. 138 by enacting s. 646. However that may be, we feel no difficulty in holding that s. 646 should not be construed as a proviso to s. 645 but as an additional saving provision. The words used in s. 645 are so clear, and the policy and object of enacting the said provision are in our opinion so emphatically expressed, that it

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would be unreasonable to hold that s. 646 was intended to provide for such a radical exception to s. 645. Where the Legislature enacts a saving section as a matter of abundant caution the argument that the enactment of the said section was not wholly necessary cannot be treated as decisive or even effective. Therefore, in our opinion, the High Court was right in coming to the conclusion that the inspector appointed under s. 138(4) of the old Act must by legal fiction, which is authorised by s. 645, be deemed to have been appointed under s. 235 of the new Act, and if that is so, respondent 1 had authority and power to issue the impugned notices under s. 240 of the new Act. The challenge to the validity of the impugned notices on the ground that respondent 1 had no authority to issue the said notices must, therefore, fail.

That takes us to the question as to whether the relevant provisions of s. 240, which empower respondent 1 to issue the relevant notices by which the appellant was called upon to give evidence and to produce documents, offend against the fundamental constitutional right guaranteed by Art. 20(3). It has been strenuously urged before us that the main object of the present investigation is to discover whether the appellant has committed any offences, and so by compelling him to give evidence and produce documents he is denied the constitutional protection against self-incrimination.

Article 20(3) provides that "no person accused of any offence shall be compelled to be a witness against himself". It may be assumed that the appellant is being compelled to be witness against himself in the present proceedings; but even so the question which arises for our decision is whether the appellant can be said to be a person who is accused of any offence as required by Art. 20(3). Mr. Sastri has contended that the words "person accused of any offence" should not receive a narrow or literal construction; they should be liberally interpreted because the clause in which they occur enshrines a fundamental constitutional right and the scope and reach of the said right should not be unduly narrowed down. In support of this

general argument Mr. Sastri has naturally relied on the historical background of the doctrine of protection against self-incrimination; and he has strongly pressed into service the decisions of the Supreme Court of the United States of America dealing with the Fifth Amendment to the Constitution of the United States. The said Amendment inter alia provides that "no person shall be compelled in any criminal case to be a witness against himself". It would be noticed that in terms the Amendment refer to a criminal case, and yet it has received a very broad and liberal interpretation at the hands of the Supreme Court of the United States of America. It has been held that the said constitutional protection is not confined only to criminal cases but it extends even to civil proceedings (Vide: *McCarthy* v. *Arndstein*(1)). As observed by Mr. Justice Blatchford in *Charles Counselman* v. *Frank Hitchcock* (2) "it is impossible that the meaning of the constitutional provision can only be that a person shall not be compelled to be a witness against himself in a criminal prosecution against himself. It would doubtless cover such cases but it is not limited to them. The object was to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend to show that he himself had committed a crime. The privilege is limited to criminal matters, but it is as broad as the mischief against which it seeks to guard".

In support of his plea that a liberal interpretation should be put on an article which enshrines a fundamental constitutional right Mr. Sastri has also invited our attention to the observation made by Mr. Justice Bradley in *Edward A. Boyd and George H. Boyd* v. *United States* (3). Says Bradley, J., "illegitimate and unconstitutional practices get their first footing in that way, namely by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and

(1) (1924) 60 L. Ed. 158. (2) (1892) 35 L. Ed. 1110.
(3) (1886) 29 L. Ed. 746, 752.

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property should be liberally construed". The learned judge has also added that any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government, and is abhorrent to the instincts of an American. It may suit the purposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom". In regard to this eloquent statement of the law it may, however, be permissible to state that under the English Law the doctrine of protection against self-incrimination has never been applied in the departments of Company Law and Insolvency Law. There is no doubt that under s. 15 of the English Bankruptcy Act when a public examination of a debtor is held he is compelled to answer all questions as the court may put, or allow to be put to him, and that the answers given have to be signed by him and can be used against him in evidence (Vide: *In Re*: *Atherton* (1)); similar is the position under s. 270 of the English Companies Act. However, the general argument for the appellant is that in construing Art. 20(3) we may take some assistance from the broad and liberal construction which has been placed on the apparently narrow and limited words used in the Fifth Amendment to the Constitution of the United States of America.

Thus presented the argument is no doubt attractive, and its validity and effectiveness would have had to be fully and carefully examined if the question raised in the present appeal had been a matter of first impression; but the construction of Art. 20 in general and Art. 20(2) and (3) in particular has been the subject-matter of some decisions of this Court, and naturally it is in the light of the previous decisions that we have to deal with the merits of the appellant's case in the present appeal. In *Maqbool Hussain* v. *The State of Bombay* (2) this Court had occasion to consider the scope and effect of the constitutional guarantee provided by Art. 20(2). A person against whom proceedings

(1) (1912) 2 K.B. 251. (2) [1953] S.C.R. 730.

had been taken by the Sea Customs Authorities under s. 167 of the Sea Customs Act and an order for confiscation of goods had been passed was subsequently prosecuted before the Presidency Magistrate for an offence under s. 23 of the Foreign Exchange Regulations Act in respect of the same act. It was urged on his behalf that the proceedings taken against him before the Sea Customs Authorities was a prosecution and the order of confiscation passed in the said proceedings was a punishment, and so it was argued that the constitutional guarantee afforded by Art. 20(2) made his subsequent prosecution under s. 23 of the Foreign Exchange Regulation Act invalid. This plea was rejected. In dealing with the merits of the plea this Court had to consider the meaning of the words "prosecuted and punished" used in Art. 20(2). Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once, and the question raised was whether the proceedings before the Sea Customs Authorities constituted prosecution, and whether the order of confiscation was punishment under Art. 20(2). In construing Art. 20(2) this Court considered Art. 20 as a whole and examined the interrelation of the relevant terms used in the three clauses of the said article. "The very wording of Art. 20", observed Bhagwati, J., "and the words used therein—"convicted", "commission of the act charged as an offence", "be subjected to a penalty", "commission of the offence", "prosecuted and punished", "accused of any offence" would indicate that the proceedings therein contemplated are of the nature of criminal proceedings before a court of law or a judicial tribunal and the prosecution in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure". Having thus construed Art. 20(2) in the light of the relevant words used in the different clauses of the said article, this Court naturally proceeded to enquire whether the Sea Customs Authorities acted as a judicial tribunal in holding proceedings

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against the person. The scheme of the relevant provisions of the Act was then examined, and it was held that the said authorities are not a judicial tribunal with the result that the "adjudging increased rate of duty or penalty and confiscation" under the provisions of the said act did not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting the plea of double jeopardy. In the result the conclusion of this Court was that when the Customs Authorities confiscated the gold in question the proceedings taken did not amount to a prosecution of the party nor did the order of confiscation constitute a punishment as contemplated by Art. 20(2).

This decision has been affirmed by this Court in the case of *S. A. Venkataraman* v. *The Union of India* (1). In that case an enquiry had been made against the appellant Venkataraman under the Public Servants (Inquiries) Act, 1850 (Act XXXVII of 1850). On receiving the report of the enquiry commissioner opportunity was given to the appellant under Art. 311(2) to show cause, and ultimately after consultation with the Union Public Service Commission the appellant was dismissed by an order passed by the President. The order of dismissal was passed on September 17, 1953. Soon thereafter on February 23, 1954, the police submitted a charge-sheet against him charging him with having committed offences under ss. 161/165 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act. The validity of the subsequent prosecution was challenged by the appellant on the ground that it contravened the constitutional guarantee enshrined in Art. 20(2). The appellant's plea was, however, rejected on the ground that the proceedings taken against him before the commissioner under the Inquiries Act did not amount to a prosecution. The relevant provisions of the said act were examined, and it was held that in an inquiry under the said Act there is neither any question of investigating an offence in the sense of an act or omission punishable by any law for the time being in force nor is there

(1) [1954] S.C.R. 1150.

any question of imposing punishment prescribed by the law which makes that act or omission an offence. Mukherjea, J., as he then was, who delivered the judgment of the Court, has referred to the earlier decision in the case of *Maqbool Hussain* (1), and has observed that " the effect of the said decision was that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding before a court of law or a judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but which is not required by law to try a matter judicially and on legal evidence ". Thus these two decisions can be said to have considered incidentally the general scope of Art. 20 though both of them were concerned directly with the construction and application of Art. 20(2) alone.

Article 20(3) was considered by the Full Court in *M. P. Sharma* v. *Satish Chandra, District Magistrate, Delhi* (2). The question about the scope and effect of Art. 20(3) was raised in that case by a petition filed under Art. 32 of the Constitution. It appears that the Registrar of the Joint Stock Companies, Delhi State, lodged information with the Inspector-General, Delhi Special Police Establishment, against the petitioners alleging that they had committed several offences punishable under the Indian Penal Code. The lodging of this information was preceded by an investigation into the affairs of the petitioners' company which had been ordered by the Central Government under s. 138 of the old Act, and the report received at the end of the said investigation indicated that a well-planned and organised attempt had been made by the petitioners to misappropriate and embezzle the funds of the company by adopting several ingenious methods. On receipt of the said First Information Report the District Magistrate ordered investigation into the offences and issued warrants for simultaneous searches at as many as thirtyfour places. By their petitions the petitioners contended that the search warrants

(1) [1953] S.C.R. 730. (2) [1954] S.C.R. 1077.

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were illegal and they prayed that the same may be quashed as being in violation of Art. 20(3). The plea thus raised by the petitioners was ultimately rejected on the ground that the impugned searches did not violate the said constitutional guarantee. Jagannadhadas, J., who spoke for the Court, observed that "since article 20(3) provides for a constitutional guarantee against testimonial compulsion its words should be liberally construed, and that there was no reason to confine the content of the said guarantee to its barely literal import". He, therefore, held that the phrase "to be a witness" means nothing more than to furnish evidence, and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. He also pointed out that the phrase was "to be a witness" and not "to appear as a witness" and so the protection afforded was not merely in respect of testimonial compulsion in the court room but may well extend to compel testimony previously obtained from him. The conclusion of the Court on this part of the construction was thus stated. The constitutional guarantee "is available to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution; whether it is available to other persons in other situations does not call for a decision in this case". Since the First Information Report had been recorded against the petitioners in that case it followed that the first test that a formal accusation relating to the commission of an offence must have been levelled was satisfied. The question which was then considered was whether there was any basis in the Indian Law for the assumption that a search or seizure of a thing or document is in itself to be treated as compelled production of the same; and it was held that there would be no justification for treating the said search or seizure as compelled production; that is why the challenge to the validity of the search warrants issued against the petitioners was repelled. The effect of this decision thus appears to be that one of the essential conditions for invoking the constitutional guarantee enshrined in Art. 20(3)

is that a formal accusation relating to the commission of an offence, which would normally lead to his prosecution, must have been levelled against the party who is being compelled to give evidence against himself; and this conclusion, in our opinion, is fully consistent with the two other decisions of this Court to which we have already referred.

There are two other subsequent decisions of this Court to which reference may be made. In *Thomas Dana* v. *State of Punjab* (1), according to the majority decision "prosecution" in Art. 20(2) means a proceeding either by way of indictment or information in a criminal court in order to put an offender upon his trial. It would be noticed that this conclusion is wholly consistent with the view taken by this Court in the case of *Maqbool Hussain* (2) and *S. A. Venkataraman* (3). In *Mohammed Dastagir* v. *The State of Madras* (4) this Court had to consider Art. 20(3). The appellant in that case had gone to the bungalow of the Deputy Superintendent of Police to offer him a bribe which was covered in a closed envelope with a request that he might drop the action registered against him. The police officer threw the envelope at the appellant who took it up. While the appellant was still in the bungalow he was asked by the police officer to produce the envelope and he took out from his pocket some currency notes and placed them on the table without the envelope. The notes were then seized by the police officer and a rubber stamp of his office was placed on them. On these facts it was urged that in relying upon the evidence of compelled production of notes the prosecution had violated the provisions of Art. 20(3). In support of this contention the general observations made by this Court in the case of *M. P. Sharma* (5), were strongly pressed into service. This Court, however, rejected the appellant's arguments and held that the prosecution did not suffer from any infirmity. On the facts it was found that though the offence had in fact been already committed

(1) [1959] Supp. 1 S.C.R. 274.
(2) [1953] S.C.R. 730.
(3) [1954] S.C.R. 1150.
(4) A.I.R. 1960 S.C. 756.
(5) [1954] S.C.R. 1077.

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by the appellant, he had in fact not been accused of it at the stage when the currency notes were produced by him; it was also held that it could not be said that he was compelled to produce the said currency notes, because he might easily have refused to produce them, and so there was no occasion for him to invoke the constitutional protection against self-incrimination.

What then is the result of these decisions? They show that in determining the complexion and reach of its respective sub-clauses the general scheme of Art. 20 as a whole must be considered, and the effect of the inter-action of the relevant words used in them must be properly appreciated. Thus considered the constitutional right guaranteed by Art. 20(2) against double jeopardy can be successfully invoked only where the prior proceedings on which reliance is placed must be of a criminal nature instituted or continued before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. It would be noticed that the character of the said proceedings as well as the character of the forum before which the proceedings are initiated or conducted are treated as decisive in the matter. Similarly, for invoking the constitutional right against testimonial compulsion guaranteed under Art. 20 (3) it must appear that a formal accusation has been made against the party pleading the guarantee and that it relates to the commission of an offence which in the normal course may result in prosecution. Here again the nature of the accusation and its probable sequel or consequence are regarded as important.

Thus we go back to the question which we have already posed: was the appellant accused of any offence at the time when the impugned notices were served on him? In answering this question in the light of the tests to which we have just referred it will be necessary to determine the scope and nature of the enquiry which the inspector undertakes under s. 240; for, unless it is shown that an accusation of a crime can be made in such an enquiry, the appellant's plea under Art. 20(3) cannot succeed. Section 240

shows that the enquiry which the inspector undertakes is in substance an enquiry into the affairs of the company concerned. Certain documents are required to be furnished by a company to the Registrar under the provisions of the new Act. If, on examining the said documents, the Registrar thinks it necessary to call for information or explanation he is empowered to take the necessary action under s. 234(1). Similarly, under s. 234(7) if it is represented to the Registrar on materials placed before him by any contributory or creditor or any other person interested that the business of the company is carried on in the manner specified in the said sub-section the Registrar proceeds to make the enquiry. Thus the scope of the enquiry contemplated by s. 234 is clear; wherever the Registrar has reason to believe that the affairs of the company are not properly carried on he is empowered to make an enquiry into the said affairs. Similarly under s. 235 inspectors are appointed to investigate the affairs of any company and report thereon. The investigation carried on by the inspectors is no more than the work of a fact-finding commission. It is true that as a result of the investigation made by the inspectors it may be discovered that the affairs of the company disclose not only irregularities and malpractices but also commission of offences, and in such a case the report would specify the relevant particulars prescribed by the circular in that behalf. If, after receiving the report, the Central Government is satisfied that any person is guilty of an offence for which he is criminally liable, it may, after taking legal advice, institute criminal proceedings against the offending person under s. 242(1); but the fact that a prosecution may ultimately be launched against the alleged offender will not retrospectively change the complexion or character of the proceedings held by the inspector when he makes the investigation. Have irregularities been committed in managing the affairs of the company; if yes, what is the nature of the irregularities? Do they amount to the commission of an offence punishable under the criminal law? If they do who is liable for the said offence? These and

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such other questions fall within the purview of the inspector's investigation. The scheme of the relevant sections is that the investigation begins broadly with a view to examine the management of the affairs of the company to find out whether any irregularities have been committed or not. In such a case there is no accusation, either formal or otherwise, against any specified individual; there may be a general allegation that the affairs are irregularly, improperly or illegally managed; but who would be responsible for the affairs which are reported to be irregularly managed is a matter which would be determined at the end of the enquiry. At the commencement of the enquiry and indeed throughout its proceedings there is no accused person, no accuser and no accusation against anyone that he has committed an offence. In our opinion a general enquiry and investigation into the affairs of the company thus contemplated cannot be regarded as an investigation which starts with an accusation contemplated in Art. 20(3) of the Constitution. In this connection it is necessary to remember that the relevant sections of the Act appear in Part VI which generally deals with management and administration of the companies.

It is well-known that the provisions of the Act are modelled on the corresponding provisions of the English Companies Act. It would, therefore, be useful to refer to the observations made by the House of Lords in describing the character of the enquiry held under the corresponding provisions of the English Act in the case of *Hearts of Oak Assurance Co.* v. *Attorney-General* (1). In that case Lord Thankerton said "it appears to me to be clear that the object of the examination is merely to recover information as to the company's affairs and that it is in no sense a judicial proceeding for the purpose of trial of an offence; it is enough to point out that there are no parties before the inspector, that he alone conducts the enquiry, and that the power to examine on oath is confined to the officers, members, agents and servants of the company". We ought, however, to add that the last

(1) 1932 A.C. 392.

observation is no longer true about the inspector's powers under s. 240 of the new Act. In the same case Lord Macmillan observed that "the object of the enquiry manifestly is that the Commissioner may either by himself directly or through the medium of a delegate obtain the information necessary to enable him to decide what action, if any, he should take. The cardinal words of the section are those which empower the Commissioner or his inspector to examine into and report on the affairs of the society". Thus it is clear that the examination of, or investigation into, the affairs of the company cannot be regarded as a proceeding started against any individual after framing an accusation against him. Besides it is quite likely that in some cases investigation may disclose that there are no irregularities, or if there are they do not amount to the commission of any offence; in such cases there would obviously be no occasion for the Central Government to institute criminal proceedings under s. 242(1). Therefore, in our opinion, the High Court was right in holding that when the inspector issued the impugned notices against the appellant the appellant cannot be said to have been accused of any offence; and so the first essential condition for the application of Art. 20(3) is absent. We ought to add that in the present case the same conclusion would follow even if the clause "accused of any offence" is interpreted more liberally than was done in the case of *M. P. Sharma* (1), because even if the expression "accused of any offence" is interpreted in a very broad and liberal way it is clear that at the relevant stage the appellant has not been, and in law cannot be, accused of any offence. Thus the tests about the character of the proceedings and the forum where the proceedings are initiated or intended to be taken are also not satisfied; but, as we have already indicated, such a broad and liberal interpretation of the relevant expression does not appear to be consistent with the tenor and effect of the previous decisions of this Court.

It is true that in his report the Registrar has made

(1) [1954] S.C.R. 1077.

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certain allegations on which Mr. Sastri has relied. He contends that the statements in the report do amount to allegations of commission of offences by the appellant. What the Registrar has stated in his report in this particular case cannot be relevant or material in deciding the vires of the impugned section. The vires of the section can be determined only by examining the relevant scheme of the Act, and we have already seen that such an examination does not assist the appellant's contention that Art. 20(3) is contravened. Besides, what the Registrar has stated in his report can hardly amount to an accusation against the appellant; it is a report submitted by him to the Central Government, and it is only intended to enable the Central Government to decide whether it should appoint an inspector. It is not as if the investigation before the inspector begins on the basis that the Registrar is the complainant who has made an accusation against the appellant, or that the function of the investigation is to find out whether the said accusation is proved or not. As we have already seen an enquiry under s. 240 may require a large number of persons to give evidence or produce documents but it cannot be said that any accusation is made against any of the said persons. In fact three persons have been served with similar notices in the present enquiry which shows that the inspector desires to obtain relevant evidence from them as from the appellant. How can it be said that an accusation has been made against the said three persons, and that incidentally helps to bring out the real character and scope of the enquiry. Therefore we do not think that the statements made in the Registrar's report on which Mr. Sastri relies can really assist us in deciding the question of the vires of s. 240. It is also significant that the appellant has not challenged the validity of the impugned notices on any ground relatable to, or based on, the said report. The challenge is founded on the broad and general ground that s. 240 offends against Art. 20(3).

We may incidentally add that it was in support of his argument based on the Registrar's report that

Mr. Sastri sought to rely on the decision of the Calcutta High Court in *Collector of Customs* v. *Calcutta Motor and Cycle Co.* (1). In that case certain notices had been issued under s. 171A of the Sea Customs Act to certain persons to appear before the customs officials and to produce certain documents. The High Court took the view that "it appeared from the accusations made in the search warrants at the instance of the customs authorities and those made in one of the notices by the customs authorities themselves, that the accusations of criminal offences could not be excluded"; and so it was held that the requirements of Art. 20(3) were satisfied and the protection under the said article was available to the persons concerned. In our opinion this decision does not assist the appellant. It proceeded on the finding that accusations of criminal offences could be held in substance to have been made against the persons concerned, and it dealt with the other points of law on that assumption. That being so, we think it unnecessary to discuss or consider the said decision. Our conclusion, therefore, is that s. 240 does not offend against Art. 20(3) of the Constitution.

That still leaves the challenge to the vires of the said section under Art. 14 of the Constitution, though we ought to add that Mr. Sastri did not seriously press his case under Art. 14, and we think rightly. The argument under Art. 14 proceeds on familiar lines. It is urged that the ordinary protection afforded to witnesses under s. 132 of the Indian Evidence Act as well as the protection afforded to accused persons under s. 161(1) and (2) of the Criminal Procedure Code, have been denied to the appellant in the investigation which respondent 1 is carrying on in regard to the affairs of his company, and that violates equality before the law. The scope and effect of Art. 14 have been considered by this Court frequently. It has been repeatedly held that what Art. 14 prohibits is class legislation; it does not, however, forbid reasonable classification for the purpose of legislation. If the classification on which legislation is based is founded

(1) A.I.R. 1958 Cal. 682.

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on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and if the differentia has a rational relation to the object sought to be achieved, then the classification does not offend Art. 14 (Vide: *Shri Ram Krishna Dalmia* v. *Justice Tendolkar* (1)). Now in the light of this test how can it be said that the classification made by ss. 239 and 240 offends Art. 14 of the Constitution? A company is a creature of the statute. There can be no doubt that one of the objects of the Companies Act is to throw open to all citizens the privilege of carrying on business with limited liability. Inevitably the business of the company has to be carried on through human agency, and that sometimes gives rise to irregularities and malpractices in the management of the affairs of the company. If persons in charge of the management of companies abuse their position and make personal profit at the cost of the creditors, contributories and others interested in the company, that raises a problem which is very much different from the problem of ordinary misappropriation or breach of trust. The interest of the company is the interest of several persons who constitute the company, and thus persons in management of the affairs of such companies can be classed by themselves as distinct from other individual citizens. A citizen can and may protect his own interest, but where the financial interest of a large number of citizens is left in charge of persons who manage the affairs of the companies it would be legitimate to treat such companies and their managers as a class by themselves and to provide for necessary safeguards and checks against a possible abuse of power vesting in the managers. If the relevant provisions of the Act dealing with enquiries and investigations of the affairs of the companies are considered from this point of view there would be no difficulty in holding that Art. 14 is not violated either by s. 239 or s. 240 of the new Act.

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

Appeal dismissed.