

(1958) 09 BOM CK 0008

In the Bombay High Court

Case No : Appeal No. 28 of 1958 and Miscellaneous Petition No. 201 of 1957

Narayanlal Bansilal

APPELLANT

Vs

Maneck Phiroze Mistry and Another

RESPONDENT

Date of Decision : 03-09-1958

Acts Referred:

Companies Act, 1913 — Section 138, 196(7)
Companies Act, 1929 — Section 137
Companies Act, 1956 — Section 137(5), 137(6), 140, 142, 143
Constitution of India, 1950 — Article 132(1), 133(1), 141, 20(2), 20(3)
Criminal Procedure Code, 1898 (CrPC) — Section 96
Foreign Exchange Regulation Act, 1973 — Section 23
General Clauses Act, 1897 — Section 6
Sea Customs Act, 1878 — Section 167

Citation : AIR 1959 Bom 320 : (1959) 61 BOMLR 220 : (1959) ILR (Bom) 952

Hon'ble Judges : Chagla, C.J.; S.T. Desai, J

Bench : Division Bench

Advocate : Manecksha, Bhagwati and A.B. Diwan, for the Appellant; H.M. Seervai, General and J.M. Thakore, for the Respondent

Judgement

Chagla, C.J.—This appeal raises several important questions concerning the provisions of the new Companies Act of 1956. The facts which are necessary to state are very few. The appellant, who is also the petitioner, is the managing agent of a limited company called the Harinagar Sugar Mills Ltd. On 15-11-1954 the Registrar of Companies called for an explanation from the Harinagar Sugar Mills Ltd., and the Registrar stated in his letter that it had been represented to him u/s 137(6) of the Indian Companies Act that the business of the company was carried on in fraud and he had therefore to call upon the company to furnish the information which he required which was set out in the latter part of the letter. On 15-4-1955 the Registrar made a report to the Central Government. This report was made u/s 137(5) of the old Companies Act and the report was that the affairs of the company were carried out in fraud of contributories and he was of the opinion that the affairs of the company disclosed an unsatisfactory

state of affairs. He pointed out that the appellant as the managing agent of the company was also the promoter of the company. He stated in his report that under a fictitious name of Bansilal Uchant Account the company was advancing money to the several farms owned by the appellant but ostensibly purchased from the company's funds. He also recorded that between the years ending September 1942 and 1951 about Rs. 19,200/- were paid for Harpur Farm and Rs. 39,300/- were paid for Bhawanipur Farm, which showed that Uchant Account was mainly operated for purchasing such lands out of the funds of the company but for and on behalf of the appellant. The Registrar also further stated in this report that the managing agents were interested in Harinagar Cane Farm which is the principal property of the appellant, and there was no doubt that the managing agents were utilising the property of the company for their personal gain. On this report the Central Government passed an order on 1-11-1955 appointing the first respondent as an Inspector to investigate into the affairs of the company u/s 138(iv). In the operative part of this order it is stated that the Central Government, in exercise of the powers conferred by Sub-section (iv) of Section 138 of the said Act, is hereby pleased to appoint Shri Maneck P. Mistry (i.e. the first respondent), F.S.A.A., F.C.A., Chartered Accountant, Bombay, as an Inspector to investigate into the affairs of the company from the date of incorporation and point out all irregularities and contravention in respect of the provisions of the Indian Companies Act, 1913, or any other law and report in the manner indicated in a separate communication sent to him. This separate communication dealt with the mode of inquiry and the memorandum states:

"As provided by Section 141 A if on an examination of the report the Central Government find that any person has been guilty of any offence in relation to the company for which he is criminally liable, Government will refer the matter to the Advocate-General or the Public Prosecutor."

Then comes a direction to the Inspectors that they should bear in mind that for a successful prosecution the evidence in support of a charge must be clear, tangible and cogent. Inspectors were further asked that they should specify in their reports with reference to the evidence, either oral or documentary or both, collected during investigations on the following amongst other matters; and the material matters to which reference might be made are: What is the offence committed, quoting as far as possible the section contravened; the precise evidence, oral, documentary or both, which implicates each of the named accused and goes to prove the charge; and in case of misappropriation, the amount misappropriated. There is a further direction to the Inspectors that they should make proper use of their rights available to them u/s 140 of the Act including the right to examine a person on oath. Questions should be so put to persons examined on oath as to bring out their admissions with reference to facts. Now, this memorandum was annexed to the order because this memorandum contains directions issued to all Inspectors appointed under the provisions of the Companies Act and a copy of it was sent to the first respondent for his guidance in the investigation which he was called upon to undertake

pursuant to this order, Pursuant to the powers conferred upon him under this order, the first respondent wrote to the appellant a letter intimating to him that under Sub-section (2) of Section 140 of the Indian Companies Act he will examine him on oath in relation to the business of the Company. On 26-7-1956 the Central Government accorded its approval u/s 239(2) of the new Companies Act (I of 1956) to the first respondent exercising the powers of investigation into and reporting on the affairs of the appellant including his personal books and accounts and Messrs. Narainlal Bansilal, the managing agents of Harinagar Sugar Mills Ltd. It may be stated that the appellant is the proprietor of the firm of Narainlal Bansilal. After approval was accorded, the first respondent served upon the appellant four notices dated 9-5-1957, 29-5-1957 and 29-6-1957. The four notices are substantially identical and it is sufficient to refer to the first one of them. The notice of 9-5-1957 states:

"Now, therefore by virtue of the provisions contained in Section 240 of the Companies Act, 1956, I hereby call upon you to attend my office on 14-5-1957 at 3 P. M. at the offices of Messrs. Kalyaniwalla and Mistry, 32, Apollo Street, Fort, Bombay, for the purpose for the purpose of being examined on oath in relation to the affairs of the said Company and I also hereby call upon you to produce to me all the books of account and papers relating to the said Company as mentioned below. Please take further notice that in default of compliance with the requisition aforesaid necessary legal steps will be taken without further reference to you."

Then comes a list of books and papers to be produced and among them are the persona books of account of the appellant of Messrs. Narayanlal Bansilal, the managing agents of Harinagar Sugar Mills Ltd., for the years 1933 upto date, and books of account of Harinagar Cane Farm from 1934 upto date. The petition which the appellant filed and out of which this appeal arises, challenged these four notices as being bad in law, and the challenge was based on three grounds which were urged before us. The three grounds which were urged were that the first respondent having been appointed under the old Act had no jurisdiction to exercise powers under the relevant provisions of the new Act. The second contention was that certain portions of Section 240 of the Companies Act, to which we will make reference at the proper time, offend against the provisions of Article 20(3) of the Constitution, and it was also urged that certain portions of Sections 239 and 240 offend against the provisions of Article 14 of the Constitution. The learned Judge rejected all the three contentions raised by the appeal.

2. Turning to the first point which deals with the powers of the appellant, it is necessary in the first place to look at the relevant provisions of the old Act of 1913 and the new Act of 1956. Under the old Act, u/s 137 power was conferred upon the Registrar to call for information or explanation from a company in respect of the affairs of the company, and Sub-section (5) of that section provided that on the receipt of the necessary information if it disclosed an

unsatisfactory state of affairs as far as the company was concerned, it was made incumbent upon the Registrar to report the circumstances of the case to the Central Government. Then Section 138 conferred upon the Central Government the power to appoint one or more competent Inspectors to investigate the affairs of any company and the case with which we are concerned is Sub-clause (iv)-

"(iv) in the case of any company, on a report by the Registrar u/s 137(5)".

It was under this section that the Central Government appointed an Inspector on a report made by the Registrar u/s 137(5), Section 140 deals with inspection of books and examination of officers and it provides:

"(1) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(2) An inspector may examined on oath any such person in relation to its business, and may administer an oath accordingly."

And it is made penal by Sub-section (3) to refuse to produce any book or to answer question put by the Inspector relating to the affairs of the company. It will be noticed that Section 140 confers rather wide powers upon the Inspector, but the power was confined to investigation relating to the affairs of the company, and the power to administer oath and obtain documents was also confined to matters relating to the business of the company under investigation. There was no power in the Inspector to investigate into the affairs of any other body or any other person. Section 141 dealt with results of the examination held u/s 140 and Sub-section (1) made it incumbent upon the Inspector to report his opinion to the Central Government. Section 141A dealt with the institution of prosecutions and these prosecutions were to be launched by reasons of the facts disclosed in the report of the Inspector. But before a prosecution could be launched, the matter had to be referred by the Central Government to the Advocate General or the Public Prosecutor. But it was left to the subjective determination of the Central Government whether to refer the matter to the Advocate General or the Public Prosecutor because Sub-section (1) expressly provided

"If from any report made u/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"

Sub-section (2) dealt with the case where the matter was referred to the Advocate General or the Public Prosecutor and if either of them came to the conclusion that the case was one in which a prosecution ought to be instituted, he had to institute the proceedings and it was made obligatory upon all officers and agents of the company past and present to give him all assistance in connection with the prosecution which they were reasonably able to give. But it is material to note that the accused in the proceedings was exempted from this

duty; in other words, it was not obligatory upon him to render any assistance to the law officer of the State. Section 142 gave the power to the company to appoint Inspectors in contradistinction to the power conferred upon the Central Government u/s 138. Under this section the company could appoint an Inspector by a special resolution, and the report was to be made to the company instead of to the Central Government. Section 143 provided that the report of the Inspector shall be admissible in any legal proceeding as evidence of the opinion of the Inspector in relation to any matter contained in the report. Therefore, this was the scheme under the old Act with regards to investigation into the affairs of a company which the Registrar found was not managed as it should be managed, and it will be noticed that the scope and purpose of the investigation was to investigate the affairs of the company and all powers which were coffered upon the Inspector were germane to the main purpose of the investigation which was to find out how the affairs of the company were being managed.

3. Turning to the new Act of 1956, certain important alterations were made in the provisions with regard to inspection and we will now proceed to point out what the main alterations were. Section 234 substantially corresponded to Section 137. Section 235 also substantially corresponded to Section 138. Then we have Section 237 which confers power upon the Central Government to appoint Inspectors in cases other than covered by Section 235 and without prejudice to the powers of the Central Government under that section, and it is made incumbent upon the Government to appoint Inspectors to investigate the affairs of the company if the company by special resolution or the Court by order declares that the affairs of the company ought to be investigated by an Inspector appointed by the Central Government. So that the power that was given under the old Act to the company u/s 142 to appoint Inspectors who were to report to the company itself was taken away and instead of that Section 237 made it obligatory upon the Government to appoint Inspectors if the company itself by special resolution declared that the affairs of the company conferred upon the Court that the Court could also direct the Government to appoint an Inspector or Inspectors. Then we come to Section 239 and this provision considerably enlarges the power of the Inspector with regard to inspection. It will be remembered that Section 140 confined the power of the Inspector with regard to investigation with certain definite bounds. Section 239 extended the power of the Inspector not only to investigate into the affairs of the company concerned, but also into the affairs of related companies or of managing agents or associates as defined by the Companies Act. It is under this section that the first respondent is purporting, under the notices issued and which are impugned, to call upon the appellant to submit to an investigation of his affairs both as managing agents and also of his individual business. But while conferring this very extensive power upon the Inspector, the Legislature was careful to provide that this examination was to be held if an Inspector appointed u/s 235 or Section 237 to investigate the affairs of the company thinks it necessary for the purposes of this investigation. So that it was not as if the Inspector was at large and he could call

upon a managing agent to disclose his private books of account or the books of account of his private business or to indulge in a roving inquiry. The Inspector had to be satisfied that such inspection books or such inquiry was necessary for the main purpose for which he was appointed an Inspector and for which the inquiry was ordered and that was to investigate into the affairs of the company. In other words, what the Inspector had constantly to keep in mind was that his primary function and duty was to investigate the affairs of the company. It is in order to discharge that primary function that he was empowered to go further on what he could do u/s 140 and to examine the managing agent and also examine his personal books of account and the books of account of his own personal business. Sub-section (2) of Section 239 provides:

"In the case of any body corporate or person referred to in Clauses (b) (ii), (b) (iii), (c) or (d) of Sub-section (1), the inspector shall not exercise his power of investigating into and reporting on, its or his affairs without first having obtained the prior approval of the Central Government thereto."

As will be remembered, the first respondent only, sought to exercise his power u/s 239 after he had obtained the prior approval of the Central Government. Therefore, by this Sub-section the Central Government kept control over this Inspector and would permit him to exercise his extensive powers u/s 239 with regard to investigation of persons and bodies other than the company concerned, provided the Central Government gave its approval to such investigation. Then Section 240 casts an obligation upon all officers and agents of the company and all companies and persons referred to in Section 239, whose affairs are being investigated through the approval of Government, to produce all documents and evidence in their possession. Sub-section (2) of that section empowers the Inspector to examine any person on oath, and Sub-section (3) provides that if such a person refuses to produce before an Inspector any relevant book or paper before and Inspector any relevant book or paper or answer any question put to him by the Inspector, he may certify the refusal to a competent Court and the Court may punish such person for contempt. Then Sub-section (4) empowers the Inspector to apply to the Court for the purposes of investigation to examine on oath a person whom he has no power to examine pursuant to the power conferred upon him, and the Court may, if it thinks fit, order such a person to attend and be examined on oath. This examination is to be held by the Court itself. There is an obligation upon the person examined to answer all questions. Then comes the important provision in Sub-section (5) that the notes of examination, whether of evidence taken by the Inspector under Sub-section (2) of Section 240 or taken by the Court under Sub-section (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 in evidence against him. Section 241 deals with the Inspector's report which has got to be forwarded to the Central Government, and Section 242 deals with prosecution which substantially is the same as Section 141A but it emphasises the discretion conferred upon the Central Government in regard to launching of prosecution because it says that the

Central Government may, after taking such legal advice as it thinks fit, prosecute such person for the offence.

4. The first question that arises for our consideration is this. The first respondent was appointed an Inspector u/s 138 of the old Companies Act and, as already pointed out, if that Act had continued to be the law of the land, admittedly he could not have issued the impugned notices. He has issued these impugned notices because he has received the prior approval of the Central Government u/s 239(2), and the contention of the Union of India is that notwithstanding the fact that the first respondent was appointed under the Act of 1913, notwithstanding the fact that under that Act he had no power or no authority to issue these notices, once the Act of 1956 was placed on the statute book and he received the approval of the Central Government, he was authorised to exercise the power conferred upon him u/s 239, and what he has done by issuing these notices is to exercise powers which he has a right to exercise u/s 239. What is urged by Mr. Manechksha on this head of his argument is that the first respondent has not been appointed an Inspector u/s 235 of the Act of 1956 or u/s 237 of that Act, and according to him it is only an Inspector appointed u/s 235 or Section 237, as Section 239 expressly states, who can exercise the extended powers conferred u/s 239. So the question which we have to decide lies in a very narrow compass. Is it necessary under the law that the first respondent should have been appointed an Inspector by the Central Government u/s 235 before he could exercise the powers u/s 239? Or are there provisions in the Act of 1956 which permit the first respondent, although appointed under the Act of 1913, to exercise the powers u/s 239 with the prior approval of the Central Government without a fresh appointment u/s 235? The sections which throw light on this question are sections which we find at the need of the new Companies Act and which are grouped together under the heading "Repeals and savings".

5. The first section to which reference might be made is Section 645, and to the extent that it is relevant it provides that nothing in this Act shall affect any appointment made or thing done under or in pursuance of any previous companies law, but any such appointment 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 or done under or in pursuance of this Act shall have effect as if made or done under or in pursuance of this Act. Now, if this section stood by itself, the question that we have to decide will present no difficulty because looking to the plain language of this section what it provides is that an appointment made or a thing done under the old Act is continued not under the provisions of the old Act but as if it was made or done under the provisions of the new Act. This is a provision of the new Act. This is a provision contrary to the provision of Section 6 of the General Clauses Act which, as is well known, provides for the continuance of any appointment made or any things done under the repealed statute as if the repealing statute had not been passed. Section 645 on the contrary provides that the thing which was set in motion, as it were, under the old law was to continue, but not under the provisions of the old law but under the provisions of the new

law. Therefore, applying this section to the facts of the present case, we have an Inspector appointed u/s 138 of the Act of 1913. He had carried on part of his investigation u/s 140. By reason of this section his appointment is to continue in force and if his appointment could have been made under the Act of 1956 it shall have effect as if it was made under this Act. Now undoubtedly under this Act an Inspector could have been appointed u/s 235, and therefore what Section 645 does is by legal fiction to equate the appointment of the Inspector u/s 138 with his appointment of the Inspector u/s 138 with his appointment u/s 235. Therefore, we must look upon the Inspector as being appointed u/s 235 if the legal fiction is to have full effect. Then, obviously, it is not necessary to make a fresh appointment. If it was necessary to make a fresh appointment there was no need for the legal fiction. Therefore the law looks upon the Inspector, the first respondent, as being appointed u/s 235 after the Act of 1956 came into force, and if he is appointed u/s 235 there with the prior approval of Government u/s 239(2) he can exercise the powers u/s 239.

6. But the difficulty is caused by Section 646 which follows upon Section 645, and that section provides:

"Nothing in this Act shall affect the operation of Section 138 of the Indian Companies Act, 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 u/s 235 of this Act."

Briefly put, Mr. Manechksha's argument is that Section 346 must be looked upon as a proviso to Section 645. Section 646 in terms says: "Nothing in this Act shall affect" which would include obviously the provisions of Section 645. So according to Mr. Manechksha it was in Section 646 that the Legislature was specifically legislating with regard to the operation of Section 138. We must look only at Section 646 in order to decide what the effect of this provision incorporated in the Act by the Legislature is. According to Mr. Manechksha, what Section 646 does is to continue the operation of Section 646 does is to continue the operation of Section 138 and Section 138 only deals with the appointment of the Inspector. It does not deal with the powers of the Inspector. Under the old Act it was Section 140 that dealt with his powers. Therefore, says Mr. Manechksha, what is saved by Section 646 is the appointment of the first respondent u/s 138 of the old Companies Act because as the operation of that section is not affected by anything in the Act, Section 138 continues to be in operation. Further, Section 646 also saves the inspection already begun by the Inspector appointed u/s 138, and having saved both the appointment and the inspection under the old Act, Section 646 goes on to provide that the provisions of the new Act shall only apply to or in relation to a report to be made by Inspectors and the provisions of the new Act shall apply to this report as if the Inspector had been appointed u/s 235 or 237 of the new Act. Therefore, what Mr.

Manecksha contends is that there is nothing in Section 646 which confers upon the Inspector appointed u/s 138 the extended powers conferred by the new Act u/s 239. Not only is there nothing in Section 646 conferring these powers, but on the contrary Section 646 limits the application of the Act of 1956 to the specific provisions mentioned in Section 646 itself. According to Mr. Manecksha, it is not permissible to the Court to extend the Scope of Section 646 and to hold that not only the provision of the Act of 1956 with regard to the report apply to the Inspector, but also the provisions with regard to investigation contained in Section 235. The other two sections to which reference might be made with reference to this argument is Section 653 which provides:

"The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act."

and section 658 which provides:

"The mention of particular matters in Sections 645 to 657 or in any other provision of this Act shall not prejudice the general application of Section 6 of the General Clauses Act, 1897, with respect to the effect of repeals."

7. Now, the argument advanced by Mr. Manecksha undoubtedly looks very impressive, but a three-fold answer has been given by the Advocate General and we must proceed to examine this answer. Any one of the three arguments, if accepted, would constitute an effective reply to the difficulties raised by Mr. Manecksha with regard to the exercise of the power u/s 239 by the first respondent. The first answer given by the Advocate General is that Section 646 is a saving provision, and it is settled law that if the Legislature saves and deals with a particular provision of the law, when in the earlier sections it has dealt generally and saved other provisions of the law, it does not follow that by reason of the specific mention of a particular provision of the law the other provisions dealing with the same subject are not saved and do not fall within the general provisions contained in the earlier sections. As was said by Lord Macgaghton in *Commissioners for Special Purposes of Income Tax v. Pemsel*, 1891 AC 531 :

"It is not so very uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption. Nor is surplusage or even tautology wholly unknown in the language of the Legislature."

Therefore, the whole of Mr. Manecksha's argument really comes to this that because a special exemption is made in connection with the operation of Section 138 and the report of the Inspector u/s 646, therefore the general exemption contained in Section 645 cannot apply to the continuance of the appointment of the Inspector under the Act of 1956. This argument is undoubtedly based upon the normal and natural canon of construction which requires that we must not attribute to the Legislature either redundancy or tautology. But as Lord Macgaghton points out -- and what he points out is true not only in the history of English legislation -- Legislators have been known for the sake of caution to indulge in surplusage or in tautology, and it would indeed be extraordinary that

the Legislature should have exempted the Inspectors appointed u/s 138 of the old Act from the operation of Section 645. No possible reason can be suggested why the Legislature did not intend that the Inspectors appointed u/s 138 of the old Act should continue and be deemed to be Inspectors appointed u/s 235 of the new Act. Therefore, in our opinion, Section 646 does not furnish any answer to the plain interpretation of Section 645 which, as already pointed out, does cover the case of an Inspector appointed u/s 138 of the old Act. We refuse to read Section 646 as being an exception to the provision made in Section 645 that all appointments made under the old Act should be deemed to be appointments made under the new Act.

8. We have been taken through the provisions of the English Act of 1948 and our attention has been drawn to the difference in drafting between the English Act and the Indian Act. There can be no doubt that our Act of 1956 is based upon the English Act of 1948. Indeed, there is a great deal of ill-informed criticism in our country that the Legislature has passed a company law which is sweeping in its effect and which is draconic in consequences. But this ill-informed criticism forgets that our Act is substantially based on the English Act with this importance amendment that many sections of our Act are devoted to managing agencies and managing agents, an institution which fortunately or unfortunately for the British people does not flourish on the English soil. We may just in passing refer to what the provision of the English Act of 1948 was with regard to the saving clause corresponding to Section 646. The English section is Section 459(6):

"Nothing in this Act shall affect the operation of Section 137 of the Companies Act, 1929, as respects inspectors appointed before, or to continue an inspection begun by inspectors appointed before, the commencement of this Act, and Section 171 of this Act shall apply to a report of inspector appointed under the said Section 137 as it applies to a report of inspectors appointed u/s 264 of this Act."

Now, really, this section to our mind is in entirely a different context because Section 137 of the English Act dealt with the power of the company to appoint Inspectors corresponding to the provision of Section 142 of the old Act, and Section 137 was not reproduced in the English Act of 1948 just as it was not reproduced in our Act of 1956. This section purported to save the operation of Section 137 to the extent that Inspectors had been appointed by companies and inspection had been begun by those Inspectors, and this section applies only Section 171 of the new Act to the report made by the Inspectors and put that report on the same footing as a report made under the provisions of Section 164 of the new Act. Section 171 of the new Act only deals with the report of the Inspector to be evidence, corresponding to an identical provision in our old Act. When we turn to Section 646, it deals with the operation of Section 138 which deals with the appointment of an inspector by the Central Government and not by the company and, as has been rightly pointed out by the Advocate General, the latter part of Section 646 applies not only to the case of an inspector

appointed u/s 138 the provision of any particular section, but it applies all the provisions of the Act to or in relation to a report of inspectors appointed u/s 138 as they applied to or in relation to a report of inspectors appointed u/s 235 or 237. So that Section 646 equates the report of the inspector u/s 235 or 237 to an inspector appointed u/s 138 with this important addition that not merely the report is equated but the provisions of the new Act are made applicable to this report or in relation to this report, and this brings us to the second answer given by the Advocate General.

9. The second answer is that even if Mr. Manecksha's argument were to be accepted and Section 646 was to be construed as an exception to Section 645, the language of Section 646 makes it clear that all the provisions of the new Act including the provisions contained in Section 239 were to apply to an inspector appointed u/s 138. What is argued is that it is not merely the provisions of the Act which are to apply to a report, but they are to apply in relation to a report, and the Advocate General says that the expression "in relation to" is an expression of very wide import and the provisions of the Act which deal with the powers of the inspector antecedent to the making of the report and all that has to be done in connection with the report after it has been made, are all covered by the expression "in relation to". It is pointed out that the first part of Section 138 only deals with the appointment of the inspector. Indeed, it is nothing more than a reproduction in substance of Section 6 of the General Clauses Act. Having continued that appointment, according to the Advocate General, the latter part of Section 646 deals with the powers of the inspector and in dealing with that it uses language wide enough to include the powers conferred upon the inspector under the new Act u/s 239. In view of what we have held with regard to the effect of Section 646, it is unnecessary to decide whether the expression "in relation to" is of such wide import as to cover the conferment of power upon an inspector u/s 239.

10. The third answer suggested by the Advocate General is that if Section 646 deals only with the power of the Central Government to appoint an inspector and does not deal with the power of the inspector himself, then that power falls within the ambit of Section 645 and is not affected by Section 646. What is said is that Section 646 deals with, according to the argument of Mr. Manecksha, the limited subject matter expressly set out in that section. Well, says the Advocate General, let Section 646 apply to that limited subject-matter; with regard to all matters that are outside that subject-matter we should look to Section 645 for its application. It is again unnecessary for us to express any opinion on this argument as the first answer given by the Advocate General is sufficient to dispose of the first contention of the appellant.

11. The second contention urged by Mr. Manecksha is of very great importance and it affects certain important rights conferred by the Constitution upon the citizens of our country. Article 20(3) of the Constitution which provides that no person accused of any offence shall be compelled to be a witness against himself,

is based upon, as we shall presently point out, the well known principles of English law and also upon a specific article in the American Constitution. As has been pointed out, the abuses of the Star Chamber where confessions were extracted from those who appeared before that Chamber led to a revulsion of feeling in England against self-accusation and the feeling assumed such strong proportions that the principle became incorporated in the English common law that a person cannot be compelled to testify against himself. The principle was known as testimonial compulsion, the basic features of which were that it is wrong to compel a man to give evidence and to use that answer or that evidence against him. He has given the answer because he is not a free agent. He does not do it voluntarily; he does it under compulsion, and then to make use of that answer obtained under compulsion against himself in order to convict him or to hold him liable for any omission or default is contrary to basic principles of justice. Now, this principle of English common law was so well established that when the American founding fathers drafted their Constitution it was incorporated in that Constitution, not at the first stage, but later on by means of an amendment, and the form that the amendment took in the American Constitution is in the Amendment Article, V, and the relevant portion of that amendment for the purpose of this discussion is that "no person shall be compelled in any criminal case to be a witness against himself". Reference may also be made to the Amendment Article IV which deals with unreasonable searches and seizures and provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and a particularity describing the place to be searched, and the persons or things to be seized."

So that the Fourth Amendment safeguarded the privacy of the home and made it unconstitutional for the issue of searches and seizures unless they were on reasonable grounds. The Fifth Amendment dealt with what is known as testimonial compulsion.

12. Now, our Constitution makers in Article 20(3) did not deal with the Fourth Amendment but, as the authorities have made it clear, any dealt with testimonial compulsion leaving searches and seizures to be dealt with under the general law, unless as we shall point out, searches or seizures constitute a contravention of Article 20(3) as being testimonial compulsion for the production of documentary evidence. The difference between the language used in Article 20(3) and the Fifth Amendment will become immediately apparent. The American Constitution limits the right of immunity from compulsory testimonial to a criminal case. In Article 20(3), as Mr. Manekshaw has rightly pointed out, that limitation does not appear. The protection against this compulsion under our Constitution is general. It is not confined to any particular criminal case as would appear if Article 20(3) were to be read by itself. But in construing Article 20(3) we must adopt certain

canons of construction. The first and the obvious one is to read the Article as a whole and not to divorce Clause (3) of that Article from the rest of it. The second is that we must not overlook the fact that the Constitution makers in India had knowledge not only of the American Constitution but also the principles of English common law and also the exception engrafted upon those principles. Finally, we must give to this Article an interpretation which is for the greatest good of the people. We are not dealing with an ordinary statute or with an ordinary piece of legislation. We are dealing with the Constitution of India and in interpreting any provision of the Constitution we must not overlook the fact that the Constitution was enacted for the purposes set out in the preamble to the Constitution. Therefore, any interpretation which advances the good of the people must be preferred to an interpretation which would retard the interest of the people of our country. Fortunately in this case the interpretation of Article 20(3) is not a matter of first impression. We have assistance, and more than assistance, from the decisions of the Supreme Court to which reference will be made, and these decisions, as we shall presently point out, make it clear that Article 20(3) should be read in the context of the two clauses which precede it and this Article should not be read in the light of the American Constitution or the American decisions but more in the light of our own legislative provisions, our own legislative history, the background of English law, and the Constitution looked upon as an organic whole.

13. Turning first to the Article itself, the marginal note is "Protection in respect of conviction for offences", and the Clause (1) provides:

"(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

Clause (2) provides:

"(2) No person shall be prosecuted and punished for the same offence more than once."

Then we come to the clause in question:

"(3) No person accused of any offence shall be compelled to be a witness against himself."

Looking at the language used and the expressions, it seems clear that what the Constitution makers were contemplating was various privileges conferred upon persons either in the conduct of a criminal proceeding itself or in respect of a criminal proceeding. The expressions in Clause (1) "convicted of any offence, subjected to penalty;" in Clause (2) "prosecuted and punished"; and in Clause (3) "accused of any offence", inevitably leads one to that conclusion. Although the marginal note does not clearly apply to all provisions of Article 20, the emphasis placed on the marginal note is "conviction for offences."

14. Turning next to the decisions of the Supreme Court, there are three decisions which are of importance and which have got to be taken into consideration in interpreting this Article. The first and the earliest is *Maqbool Hussain Vs. The State of Bombay*, . In that case the Supreme Court undoubtedly was dealing with the provisions of Clause (2) of Article 20 and the question that arose for the decision of their Lordships was whether, where a person against whom proceedings had been taken by the Sea Customs Authorities u/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 u/s 23 of the Foreign Exchange Regulation Act in respect of the same act, it could be said that the constituted a contravention of Clause (2) of Article 20 and whether he was prosecuted and punished for the same offence more than once, and the Court came to the conclusion that Clause (2) of Article 20 had not been contravened. Mr. Manekshaw is right when he contends that this is not a direct decision on the particular provision of Article 20 which we are considering, but there are important and weighty observations in the judgment of Mr. Justice Bhagwati at p. 738 (of SCR): (at p 328 of AIR), which observations are not confined to Clause (2) of Article, 20 but which are pertinent to the construction of the Article as a whole, and this is what the learned Judge says:

"The words "before a court of law or judicial tribunal" are not to be found in article 20(2). But if regard be had to the whole background indicated above it is clear that in order that the protection of article 20(2) be invoked by a citizen there must have been a prosecution and punishment in respect of the same offence before a court of law or a tribunal, required by law to decide the matters in controversy judicially on evidence on oath which it must be authorised by law to administer and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute but not required to proceed on legal evidence given on oath. The very wording of article 20 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."

Therefore, it is clear that Mr. Justice Bhagwati in this decision, construing Article 20 as a whole took the view and the clear view that the proceedings contemplated in Article 20, not in clause (2) only but in the Article as a whole, were criminal proceedings, and dealing particularly with clause (2) the learned Judge took the view that the prosecution in that context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal. Mr. Manekshaw again rightly contends that in clause (2) of Article 20 we are concerned with accusation and not with prosecution and he submits that

accusation and not with prosecution and he submits that accusation must be antecedent to prosecution, and according to him the proper construction of clause (2) of Article 20, notwithstanding these remarks of Mr. Justice Bhagwati, is that if there is an allegation of an offence having been committed before a tribunal or an authority competent to investigate into that allegation, then a person is accused of an offence within the meaning of this clause and he cannot be compelled to be a witness against himself.

15. Therefore, really, the question before us narrows itself down to this. What is the meaning we must give to the expression "accused of an offence." In this case there is no doubt that the compulsion against which Article 20(3) affords protection is present because, as we have pointed out when we were looking at the scheme of the Act, u/s 240(5) there is provision for an obligation on the part of any person examined by an inspector or by the Court to answer questions put to him and the possibility of those answers being used in evidence against him and it is also clear that these answers could be used in evidence against him although the answers may be of an incriminating nature. Therefore, if we may pose the question which we have to consider and decide, the question is this. Is the expression "accused of any offence" used in a general sense or is it used in a technical sense? Is the accusation referred to in this clause an accusation without any reference to any criminal proceeding or is it an accusation with reference to a criminal proceeding? Mr. Manecksha concedes, and rightly concedes, that the investigation held by the Inspector is not a judicial proceeding, and in our opinion it cannot be seriously urged that it is a criminal proceeding. But according to Mr. Manecksha that is an irrelevant fact. The appellant is accused of having committed an offence under the Company Law and under other laws. In respect of that accusation investigation is being held by the Inspector and in the course of the investigation there is a compulsion upon the appellant to answer such questions as might be put to him. Those answers may be incriminating and they may be used against him, and therefore Mr. Manecksha says that the Constitutional safeguard given to every person in India has been violated. Now, if we had to accept the observations of Mr. Justice Bhagwati as correctly laying down the interpretation of Article 20, then it is clear that Mr. Manecksha's contentions must be rejected, because the passage just referred to leaves no doubt that in the opinion of the learned Judge the construction of Article 20 required that the proceedings in respect of the various protection given by Article 20 are criminal proceedings. But Mr. Manecksha says that this decision was a decision on Article 20(2), that the observations with regard to the interpretation of Article 20 are obiter, and that the real decision of the Supreme Court on Article 20(3) is *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, to which we shall presently come. But before we come to that decision, we must point out, as we have said in this Court before, that even an obiter of the Supreme Court deserves the highest respect and it is incumbent upon this Court to accept even the obiter as correctly laying down the law. When in a case a particular clause of a section or an Article calls for interpretation and

in order to interpret it the Supreme Court interprets the whole section or Article and lays down the proper canon of construction, it is impossible to contend that interpretation is not binding upon this Court, unless of course the Supreme Court in any subsequent decision has departed from the interpretation laid down by it in this decision, and, as has been pointed out by the Advocate General, far from the Supreme Court departing from it, what it has laid down in this case as to the proper interpretation of Article 20 is reiterated and re-emphasised by it in a subsequent decision in *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, .

16. Turning to Sharma's case on which Mr. Manecksha has rightly placed strongest reliance, it is *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, . It is true that this is the only case of the Supreme Court where the question of the construction of Article 20(3) directly arose for consideration and decision. The facts are a little important. The Registrar of the Joint Stock Companies, Delhi State lodged Police Establishment, that Messrs. Dalmia Jain Airways Ltd. had committed various offences. This was recorded by them Special Police as the first information report. On the basis of that report an application was made to the District Magistrate, Delhi u/s 96 of the Criminal Procedure Code for the issue of warrants for the search of certain documents. Permission to investigate in respect of some of the non-cognizable offences mentioned in the first information report was also asked for by this application and the District Magistrate ordered investigation of the offences and issued warrants for simultaneous searches at various places. The searches were made pursuant to this order and the petition was filed in the Supreme Court praying that the search warrants may be quashed as being illegal. What was argued before the Supreme Court was that this was testimonial compulsion and violated the provisions of Article 20(3). It was argued before the Supreme Court that the expression "compelled to be a witness against himself" only applied to the actual evidence given in a Court of law and that when documents were being seized which may be used against an accused person Article 20(3) had no application. That argument was rejected by the Supreme Court and the Supreme Court held that the safeguard afforded by Article 20(3) was not restricted to testimony in Court itself, but it also applied to documentary evidence, and it also applied to compulsion which may be used against a person to be a witness against himself in a proceeding antecedent to the trial itself. But the particular application was dismissed on the ground that in the American Constitution search warrants were dealt with by the Fourth Amendment, the Constitution makers had not closed fit to incorporate that provision in the Constitution, and therefore the search warrants were to be governed by the ordinary law of the land and Article 20(3) did not apply to search warrants. Now, there is a passage at p. 1086 (of SCR): (at p. 303 of AIR) on which strong emphasis has been placed by Mr. Manecksha.

"In view of the above background, there is no inherent reason to construe the ambit of this fundamental right as comprising a very wide range. Nor would it be legitimate to confine it to the barely literal meaning of the words used, since it is

a recognised doctrine that when appropriate a constitutional provision has to be liberally construed, so as to advance the intendment thereof and to prevent its circumvention. Analysing the terms in which this right has been declared in our Constitution, it may be said to consist of the following components. (1) It is a right pertaining to a person "accused of an offence"; (2) It is a protection against "compulsion to be a witness"; and (3) It is a protection against such compulsion resulting in his giving evidence "against himself."

Therefore, Mr. Manekshaw says that the attempt of the Advocate General to persuade us to give a limited and restricted meaning to this provision in the Constitution should be repelled by us in view of this emphatic observation by the Supreme Court.

17. Now, this observation must be understood and appreciated in its own context. The Supreme Court refused to confine the protection afforded by Article 20(3) to the narrow ambit of oral evidence given in the Court itself. To that extent a wider signification must be given to that Article and to that extent it will be wrong to construe this Article literally. But the question still remains whether, within the larger ambit as envisaged by the Supreme Court, it should be confined to criminal proceedings or it should be further extended to case like this where an inquiry is being held which is not a criminal proceeding in which allegations have been undoubtedly made against the appellant which are allegations of having committed an offence, and whether it could be said that in such proceeding any provision of law by which the person against whom the inquiry is being held may be compelled to answer incriminating questions should be held to be a contravention of the constitutional safeguard. Fortunately, this very case throws considerable light on the manner in which Article 20(3) should be construed because at p. 1088 (of SCR): (at p. 304 of AIR) Mr. Justice Jagannadhandas J. in the judgment of the Supreme Court says:

"Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the Court room. The phrase used in Article 20(3) is "to be a witness" and not to "appear as a witness" : It follows that the protection afforded to an accused in so far as it is related to the phrase "to be witness" is not merely in respect to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him. It is available therefore 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 decision in this case."

Therefore, the test laid down by the Supreme Court is that this protection is available when there is a formal accusation against a person, and the second test

is that formal accusation must in the normal course result in prosecution. Now, can it be said that in this case the accusation levelled against eh appellant is a formal accusation, and can it be said that in the normal course the accusation would result in prosecution? Mr. Manecksha says that in this very case there was no formal accusation. All that had happened was that a first information was given to the police and on the strength of that information an application was made for a search warrant. Therefore, the Supreme Court obviously took the view that an allegation made to the police of Messrs. Dalmia Jain Airways Ltd., having committed an offence was an accusation which came within the ambit of Article 20(3). Mr. Manecksha further says that this is certainly not a case where a formal accusation is made in a criminal Court or before a tribunal holding criminal proceedings.

18. Now, it is true, as Mr. Manecksha has pointed out to us, that the Supreme Court has taken the view that a mere application for a search warrant by the police does not result in the Magistrate, to whom the application is made, taking cognizance of the case. "Cognizance" as understood in the Criminal Procedure Code is a very technical expression and it may be that when the Magistrate granted the application for search warrant he had not taken cognizance within the meaning of Section 191 of the Criminal Procedure Code. See in this connection Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, and R.R. Chari Vs. The State of Uttar Pradesh, . But whether cognizance was taken or not, it was certainly, to use the language of Mr. Justice Bhagwati, initiation or starting of proceedings before a Court of law and the initiation was done by the filing of the first information report before the police authorities. It may also be said that if there was not a formal accusation before a Court, it was certainly a formal accusation with reference to a criminal proceeding, and it can also be said that in this particular case the accusation would have normally resulted in a prosecution. Now, are these elements present in the case before us? It is true, as pointed out by Mr. Manecksha in the various documents to which reference has already been made, that the appellant was charged with having misappropriated the funds of the company and having committed an offence under the Companies Act and also under the Indian Penal Code. In the sense that there was an allegation that he had done or omitted to do something which was against the law, undoubtedly he was accused of an offence. But it would be stretching the language too far to suggest that there was any formal accusation against the appellant. Nor would it be true to say that the accusation was would it be true to say that the accusation was either before a criminal Court or tribunal or was with reference to a criminal proceeding. Nor would it be true to suggest, looking to the provisions of the Criminal Procedure Code, that this accusation in the normal course would result in prosecution. It is fallacious to suggest that the only object of the inquiry and the only purpose of the report was to launch a prosecution u/s 242 of the Companies Act. It was left to the discretion of the Central Government u/s 242 to launch or not to launch a prosecution, and, as we shall point out in another context, the report of the

Inspector and the inquiry held by him serve under the Companies Act many more important purposes than the mere prosecution of a defaulting managing agent or a defaulting director.

19. We then come to the third Supreme Court case which is S.A. Venkataraman Vs. The Union of India (UOI) and Another, . That case decided that an inquiry made and concluded under Public Servants (Inquires) Act, 1850 (Act XXXVII of 1850) did not amount to prosecution and punishment for an offence as contemplated by Article 20(2) of the Constitution. It is true that this decision again is not on Article 20(3) but Article 20(2). But here too we have very weighty observations of the Supreme Court which have a direct bearing on the interpretation of Article 20(3). The Advocate General has taken us through the provisions of the Public Servants (Inquires) Act, 1850, and that Act does suggest from the language used in the various sections with regard to the framing of the charge and the person against whom the inquiry is being held as being described as an accused, that the inquiry was more or less similar to a criminal proceeding. It is also true that we do not find any provision in that Act which makes the accused a compellable witness, and therefore the element of compulsory testimonial which we find in the Companies Act is absent and to that extent no question with regard to Article 20(3) would arise when an inquiry is being held against a public servant. But the point of the decision is not that. The point of the decision is twofold. One is that the Supreme Court confirmed the decision in Maqbool Hussain Vs. The State of Bombay, with regard to the interpretation of Article 20 and it will be noticed that S.A. Venkataraman Vs. The Union of India (UOI) and Another, is subsequent to M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, and the other point is that in construing Article 20(2) the Supreme Court laid down certain tests which may be equally applicable in construing Article 20(3). At p. 1154 (of SCR): (at P. 377 of AIR) Mr. Justice Mukherjea says:

"It has also been held by this court in Maqbool Hussain Vs. The State of Bombay, , that the language of Article 20 and the words actually used in it afford a clear indication 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 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."

So once more the Supreme Court emphasis what according to it is the correct approach, and the only approach, to Article 20 as a whole. At p. 1160 (of SCR): (at p. 379 of AIR) the Court observes referring to the enquiry under the Public Servants Inquiries Act:

"At the close of the enquiry, the Commissioner has to report to the Government regarding his finding on each one of the charges made. This is a mere expression of opinion and it lacks both finality and authoritativeness which are the essential tests of a judicial pronouncement."

Now, these observations apply fully to the report to be made by the Inspector investigating under the Companies Act. The report is nothing more than an expression his opinion and there is neither finality nor authoritativeness about it. That finality and authoritativeness can only be given by the Central Government if the Central Government decides to launch a prosecution accepting the opinion give by the Inspector. At p. 1161 (of SCR): (at p. 379 of AIR), the Supreme Court considers the analogous case of a member of the Bar whose name is struck off the rolls on grounds of professional misconduct in exercise of the disciplinary jurisdiction by the proper authority, and what the Supreme Court says is that primarily the inquiry is into the professional misconduct of the member of the Bar and not into an offence committed by him or an investigation into that offence. Attention might also be drawn to another observation of Mr. Justice Mukherjea at p. 1156 (of SCR): (at p. 378 of AIR):

"In order to arrive at a proper decision on this point, it is necessary to examine the entire background of the provisions relating to enquiry into the conduct of public servants and to ascertain the exact scope and purpose of the enquiry as is contemplated by Act XXXVII of 1850 and the ultimate result that flows from it."

20. Mr. Manecksha also referred to a judgment of a single Judge of the Calcutta High Court in Calcutta Calcutta Motor and Cycle Co. Vs. Collector of Customs and Others, , where the learned Judge has applied the ratio of M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others, and has come to the conclusion that Article 20(3) was not merely applicable to a criminal trial in Court, it applied to proceedings which may lead to such a trial, and that in proceedings u/s 171A of the Sea Customs Act the party is compelled to give evidence and to depose truthfully and produce any document, in such a case he might incriminate himself, and although such a proceeding is not in the course of a criminal trial it is obvious that it is preliminary to it, and hence the provision of Section 171-A in so far as it enables the authorities to compel a person to give evidence against himself and to produce documents for that purpose offends against Article 20(3) of the Constitution and is bad. Of course, we are not considering the provisions of the Sea Customs Act. But with very great respect, the reasoning which commended itself to the learned Judge is not acceptable to us. In our view, the learned Judge has not attached sufficient importance to the observations of the Supreme Court in Maqbool Hussain Vs. The State of Bombay, and S.A. Venkataraman Vs. The Union of India (UOI) and Another, , because if he had done so we are sure he would not have come to the conclusion which he did.

21. Now, following the advice given by the Supreme Court, it would only be proper if we try to consider the real scope and nature of the inquiry under the Company's Act. What the scope and nature of the inquiry is, is made clear by the words used by the Legislature in Section 235 and those words are "to investigate the affairs of any company and to report thereon." Therefore, the main and primary function of this investigation is to look into the affairs of the company from the point of view of the provisions of the Companies Act, to

consider its working, to see whether it is worked in the interest of the shareholders, and to find out whether the privilege of incorporation has or has not been abused. We may briefly look at what the consequences of the report made by the Inspector may be. It may result in an application for a winding up u/s 243, it may lead to proceedings for recovery of damages or property u/s 244, it may lead to an application for relief in case of oppression u/s 397, and it may lead to an application for relief in case of mismanagement u/s 398. As pointed out by the Advocate General, these impugned provisions under the head of "Investigation" appear in Part VI which deals with management and administration of the company. These provisions with regard to inspection came up for consideration by the House of Lords in the case of *Hearts of Oak Assurance Co. v. Attorney-General*, 1932 A.C. 392, and the House of Lords was dealing with the Industrial Assurance Act, 1923, the provisions of which with regard to inspection were in pari materia with the provisions of the Companies Act, and Lord Thankerton at p. 396 says:

"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 inquiry, and that the power to examine on oath is confined to the officers, members, agents and servants of the company."

Of course, this last observation now will no longer be correct in view of the extension brought about in the provisions of the law both in India and in England. At p. 401 Lord Macmillan says:

"Then it will be noticed that the Commissioner may either himself conduct the inspection or entrust it to an inspector appointed by him for the purpose. The object 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.""

If those were the cardinal words in the case before the House of Lords, as far as we are concerned the cardinal words, as pointed out, which are used in Section 235 are "to investigate the affairs of the company."

22. Therefore, it is clear on an examination of the provisions of the Companies Act that the scope and nature of the inquiry is not investigation into an offence. The scope and nature of the inquiry is investigation into the affairs of the company. It is equally clear that the report is not made for the purpose of a prosecution being launched by the Central Government and that the function of the Inspector is to express an opinion on the way the affairs of the company are conducted in order that appropriate action may be taken which action may take different forms like applications under the different sections of the Companies Act

to which reference has been made or a prosecution u/s 242 of the Companies Act.

23. Mr. Manecksha has cited before us several American decisions which undoubtedly have given to this Constitutional safeguard a much wider content than what we have suggested is the right one, and Mr. Manecksha says that these American decisions correctly interpret the important Constitutional safeguard, that they emphasis the importance and value of that safeguard to the citizen, and it will be wrong for the Court to whittle down that safeguard in any manner whatsoever. Our attention was drawn to the observations in *Boyd v. United States*, (1884) 29 Law Ed. 746, Mr. Justice Bradley observation at p. 751:

"Now it is elementary knowledge that one cardinal rule of the court of chancery is never to decree a discovery which might tend to convict the party of a crime, or to forfeit his property. An any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him or crime or to forfeit his property, is contrary tot the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the proposes of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom."

It is difficult to imagine stronger words than these which could have been possibly used by any Judge from the Bench. Now, in construing the Article as we propose to do, if we are doing anything to help despotic power or to contaminate the atmosphere of political liberty and personal freedom or doing something which is abhorrent to the instincts of an Englishman or an American, we will certainly pause and ponder before we came to that conclusion. But, as we shall presently point out, with great respect, Mr. Justice Bradley has used the language of exaggeration because in certain matters an exception has been made to the doctrine of safeguard against self-incrimination, and it is incorrect to say that those exceptions can ever be looked upon by an Englishman as abhorrent to his instincts or contrary to principles of free government. But before we come to these exceptions, let us look at the American cases on which Mr. Manecksha relies.

24. The first is *Charles Counselman v. Frank Hitchcock*, (1891) 35 L Ed. 1110, and the second is *Patricia Blau v. United States*, (1950) 95 L Ed. 170. Both were cases dealing with proceedings before a Grand Jury and undoubtedly the observations in both these case give a much wider import and connotation to Article 20(3) than what in our opinion the Supreme Court has suggested as the right one. In (1891) 35 L Ed. 1110 the investigation by the Grand Jury was in respect of alleged violations of a certain Act of Congress to regulate commerce. At p. 1113 Mr. Justice Blatchford says:

"It is broadly contended on the part of the appellee that a witness is not entitled to plead the privilege of silence, except in a criminal case against himself; but such is not the language of the Constitution. Its provision is that no person shall

be compelled in any criminal case to be a witness against himself. This provision must have a broad construction in favour of the right which it was intended to secure."

And at p. 1121:

"But, as the manifest purpose of the constitutional provisions, both of the States, and of the United States, is to prohibit the compelling of testimony of a self-criminating kind from a party or a witness, the liberal construction which must be placed upon constitutional provisions for the protection of personal rights would seem to require that the constitutional guarantees however differently worded should have as far as possible the same interpretation."

Therefore, the emphasis is placed in this case that the constitutional provision in order to be valid must afford absolute immunity against future prosecution for the offence to which the question relates, and at p. 1114 Mr. Justice Blatchford went to the length of stating:

"It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such Court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted."

Therefore, the American Supreme Court took the view that absolute immunity against prosecution required that the person in whose affairs inquiry was being held should be given absolute immunity against future prosecution. The next case is (1950) 69 L Ed. 158, notwithstanding the language of the American Amendment, the Court took the view that the immunity applied both to civil and criminal proceedings.

25. Now, the Advocate General has very fairly conceded that if we were to interpret Article 20(3) in the light of these American decisions, he would have no answer to the petition presented by the appellant and that the appellant was entitled to succeed. But his contention is, apart from the decisions of the Supreme Court on which reliance has been placed, that our legislative history, which further supports and strengthens his argument that a narrower connotation should be given to Article 20(3). Now, in England, as Mr. Justice Bradley says, however abhorrent testimonial compulsion may be to the instincts of an Englishman, an exception has always been made in the department of Company Law and Insolvency Law. Before we turn to the legislative provisions, we must first look at the principle of it. In Insolvency, law is administered partly for the benefit of the creditors, but primarily in public interest. The same is true of Company law. It is administered undoubtedly for the benefit of the shareholders, but again primarily it is administered in public interest. Company law permits incorporation with limited liability and the public has got to be

safeguarded against that privilege being abused, and the English law has always taken the view that when you are investigating into the affairs of a bankrupt or into the affairs of a company, the doctrine of self-incrimination cannot defeat or should not be permitted to defeat the interest of the public, and it rightly pointed out that our law has taken the same view and has enacted the same privileges. Now, this legislative history was before our Constitution makers and it is impossible to take the view that by enacting Article 20(3) our Constitution makers wanted to make a violent departure from the principles it had followed and observed for years past to make many laws ultra vires and to adopt the American system in preference to the English system. In English law u/s 15 of the Bankruptcy Act, in the public examination of the debtor the answers given by him have to be taken down in writing, to be signed by him, and could be used in evidence against him, and there is compulsion upon the debtor to answer all questions as the Court may put or allow to be put to him. This question of compulsory testimonial under English Bankruptcy Law came up for consideration in two English cases, in *In re, Atherton*, (1912) 2 K. B. 251, where it was held that a bankrupt was bound to answer questions in his public examination even if they be incriminating, and again in *In re, Paget* 1927 2 Ch 85 it was pointed out by the Court at p. 92 that in matters of bankruptcy it is not merely the creditors who have their rights, but it is also the public themselves whose interest have to be safeguarded.

26. Turning to Company Law, apart from the impugned provisions, let us consider the provisions with regard to misfeasance summonses. First turning to the English Act, u/s 270 the person who is being examined is bound to answer question put to him, and it is clear law as pointed out by Buckley at p. 566 that a person examined cannot refuse to answer relevant questions on the ground that by doing so he may incriminate himself. Our own Companies Act had similar provisions. The Act of 1913 u/s 196(7) which deals with the power to order public examination of promoters, directors, etc., provided:

"Notes of the examination 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 in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times."

So here the use of this evidence was confined to civil proceedings. But now by the new Act u/s 478 this evidence can be used in all proceedings, thus bringing our provisions in line with the English law, and with regard to the impugned provision of our Companies Act, Section 167 of the English Act on which our Act is based provides also for evidence given in the course of investigation being used against the person giving the testimony. The only difference between the English Act and our Act is that under the English Act this provision could only be used when the person is examined by Court. In our Act the provision applies whether the person is examined by the Inspector or by the Court. Therefore, wider powers have been taken by the Legislature under our law, and the view of

Buckley in which respect must be paid, is that this provision is similar to the provision with regard to the Bankruptcy Act and apparently the person who is under examination cannot refuse to answer questions on the ground that the answer may incriminate himself.

27. We must not fail to notice one argument which was advanced by Mr. Manecksha which has a bearing both on this aspect of the case and on the next aspect which we will presently consider, that the present provisions are so stringent and according to him so barbarous that they put his client in a worse position than if the police were actually investigating into an offence committed by him. He says that if there was a police investigation, any statements made by him in the course of investigation would not be evidence. He further, says that if there was a judicial proceeding, then u/s 132, although he was compelled to answer, protection was given by the provisions of the Act. Now, the answer to that complaint is two-fold. The first is, as we have already stated that this is not an investigation into an offence, in which case the rights of the accused are safeguarded by the provisions of the Criminal Procedure Code, and, as the Advocate General pointed out, in our opinion under the Companies Act when we come to actual prosecution the Legislature is at pains to provide that assistance should be given by everyone concerned for the purpose of the prosecution except the accused in the proceedings. Therefore, when we reach that stage, the safeguard rightly afforded by our Criminal Procedure Code are given to the person concerned. With regard to the Evidence Act, in terms the Act applies to judicial proceedings. It does not apply to a proceeding which is not judicial. It is an adjectival law which can be qualified and modified by the substantive law of the country. It undoubtedly happens that in a non-judicial proceeding a person who is being examined cannot claim the privilege of the benefit of Section 132. But even in a judicial proceeding it would be open to the Legislature to provide that the adjectival law should be altered if it can be done undoubtedly consistent with the provisions of Article 20(3) of the Constitution.

28. Having taken all the circumstances into consideration we have come to the conclusion that Article 20(3) has no application to the facts of this case. There is no accusation in the sense in which we have construed that expression, viz., a formal accusation, and inasmuch as there is no accusation, the compulsion introduced by the provision of the Companies Act which is impugned is not a compulsion which can be struck down by this provision of the Constitution. We may also add that in giving this restricted meaning to the Constitutional safeguard, we have carefully weighed the rights of the individual against the interest of the public and of the State. In our opinion, it is the duty of the Court, to the extent that it can legitimately do without doing violence to the language used by the Constitution makers, to arrive at a solution which while maintaining the rights of the individual as far as possible, does not overlook the rights which the public and the State are entitled to claim.

29. Turning to the third head of Mr. Manecksha's argument, it can be very briefly

disposed of. The argument is based on Article 14. Now, there are very few articles of the Constitution which have received so much attention by different Courts as Article 14 and it is unnecessary to repeat what has been laid down as the basis of classification which will prevent the application of the Article. What is urged in this case is that there is no equality before the law because a person who is being examined under the provision of the Companies Act does not get the protection which another person is entitled to u/s 132 of the Evidence Act, and it is also said that this particular company or this particular managing agent has been picked out for special treatment and thereby there has been discrimination. The latter part of the argument, as Mr. Manecksha fairly conceded, is now conclusively answered in Dalmia's case by the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . That Mr. Manecksha says, is true as far as the challenge to Section 239 is concerned, but he says that the challenge to Section 240(5) still remains and that has not been considered by the Supreme Court. In our opinion, it is impossible to urge that there is discrimination and that there is no proper classification on a rational basis, when an important system of law as the English system recognises these exceptions was pointed out both in Insolvency law and Company Law. Therefore, if our law makes a distinction between the rights of persons who are examined under the provisions of the Company Law and the rights of persons under other laws, it cannot be said that classification is without a rational basis.

30. The result therefore is that the appeal fails and must be dismissed with costs. Two counsel certified.

31. Liberty to the respondent's attorney to withdraw the sum of Rs. 500 deposited in Court.

32. Leave to appeal to the Supreme Court under Articles 132(1) and 133(1)(c) on the appellant undertaking to file a proper petition within a fortnight. The Advocate General agrees not to proceed with the inquiry for six weeks from today to enable the appellant to get the necessary order of stay from the Supreme Court.

33. Appeal dismissed.