these relations between landlord and tenant, it was regulating house accommodation in cantonment area."

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Dulat, J.

I find myself in respectful agreement with that view, and as I have already said a consideration of the provisions of East Punjab Act III of 1949 leaves no doubt about this matter. I am, therefore, unable to accept the petitioner's contention that the East Punjab Legislature could not have provided for the restriction of rent for shops within a cantonment area.

No other question is raised in support of these petitions. In the result, therefore, I decline to interfere and dismiss these petitions but, in all the circumstances, leave the patries to their own costs in this court.

MAHAJAN, J.,—I agree.

Mohajan, J.

B. R. T.

SUPREME COURT

Before Syed Jafer Imam and K. Subba Rao, JJ.

JETHANAND BETAB,—*Appellant.*

versus

THE STATE OF DELHI (NOW DELHI ADMINISTRATION),—*Respondent.*

Criminal Appeal No. 185 of 1957.

1959

Sept., 15th

Repealing and Amending Act (XLVIII of 1952)—Object of-Section 4—Effect of—The Indian Wireless Telegraphy Act (XVII of 1935) as amended by Act XXXI of 1949—Section 6 (I-A) added—Amendment Act XXXI of 1949 repealed by Act XLVIII of 1952—Section 6 (I-A)—Whether repealed thereby—General Clauses Act (X of 1897)—Section 6-A—Effect of—"text"—Meaning of—Indian Telegraph Act

(XIII of 1885)—Section 20—Whether covers the matter provided for by Section 6 (I-A) added to Act XVII of 1933 by the Amendment Act XXXI of 1949.

Held, that the main object of the Repealing and Amending Act, 1952 was only to strike out the unnecessary Acts and excise dead matter from the Statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. Its object was only to expurgate the Indian Wireless Telegraphy (Amendment) Act, 1949, along with similar Acts, which had served its purpose.

Held, that section 4 of the Repealing and Amending Act, 1952, has no application to a case of a later Amending Act inserting new provisions in an earlier Act for, where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the Amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it.

Held, that in a view of the provisions of Section 6-A of the General Clause Act 1897, the repeal of the Indian Wireless Telegraphy (Amendment) Act, 1949, which had amended the text of the Indian Wireless Telegraphy Act, 1933 by the insertion of Section 6(I-A) therein, did not affect the continuance of the amendment made by the enactment so repealed. It is not correct to say that for the application of Secion 6-A of the General Clauses Act, the phraseology or the terminology of any enactment should have been amended but not the context of that Act. The word "text" means "subject or theme." When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject. The word, "text" is comprehensive enough to take in the subject as well as the terminology used in a statute.

Held, that section 6(I-A) inserted in the Indian Wireless Telegraphy Act, 1933 by the Amending Act of 1949 is neither covered by the provisions of the Indian Telegraph Act, 1884, nor is a surplusage not serving any definite purpose.

Khuda Bux v. *Caledonian Press* (1) and *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Ltd.*, (2), approved and relied up on; *Mohinder Singh* v. *Mst. Harbhajan Kaur* (3) and *Darbara Singh* v. *Shrimati Karnail Kaur* (4) dissented from.

Appeal by Special Leave from the Judgment and Order dated the 6th December, 1955, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Revision No. 122-D of 1955 arising out of the Judgment and Order dated the 29th July, 1955, of the First Additional Sessions Judge; Delhi; in Criminal Appeal No. 367 of 1955.

For the Appellant : Mr. Mohan Behari Lal and Mrs. Eluri Udayarathnam, Advocates.

For the Respondent : Mr. N. S. Bindra, Senior Advocate (Mr. R. H. Dhebar, Advocate with him).

JUDGEMENT

The following Judgement of the Court was delivered by

SUBBA RAO, *J*.—This appeal by special leave is directed against the order of High Court of Punjab (Circuit Bench), Delhi confirming the conviction of the appellant and the sentence passed on him by the Magistrate, First Class, Delhi, under s. 6(1-A) of the Indian Wireless Telegraphy Act, 1933 (XVII of 1933) (hereinafter called "the Act"). Subba Rao, J

Jethanand, the appellant herein, was prosecuted, along with another, in the Court of the Magistrate, First Class, Delhi, under s. 6(1-A) of the Act for possessing a wireless transmitter in contravention of the provisions of s. 3 of the Act, and was sentenced to six months rigorous imprisonment. On appeal, the learned First Additional

(1) A.I.R. 1954 Cal. 484
(2) L.R. 58 Ind. App. 259
(3) I.L.R. 1955 Punjab 625
(4) 61 P.L.R. 762

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Sessions Judge, Delhi, upheld the conviction but reduced the sentence to the period of imprisonment already undergone plus a fine of Rs. 500. On revision, the High Court confirmed both the conviction and the sentence. On an application filed for special leave, this Court gave the same, but limited it to the question of sentence.

Learned Counsel raised before us the following contentions: (1) s. 6(1-A) of the Act was repealed, and, therefore, neither the conviction nor the sentence thereunder could be sustained; and (2) if s. 6(1-A) of the Act was repealed, this Court in limiting the appeal to the question of sentence only went wrong, for if that section was not on the statute book at the time of the alleged commission of the offence, not only the sentence but also the conviction thereunder would be bad. Both the contentions raised turn upon the same point. The different steps in the argument may be stated thus: In the Act XVII of 1933, as it originally stood, there was no specific provision making the possession of wireless transmitter an offence. By the Indian Wireless Telegraphy (Amendment) Act, 1949 (XXXI of 1949) (hereinafter called the "1949 Act") s. 6(1-A) was inserted in the Act, whereunder the possession of a wireless transmitter was constituted a separate offence. The amending Act was repealed by the Repealing and Amending Act, 1952 (XLVIII of 1952) (hereinafter called the "1952 Act"), with the result that on the date of the alleged commission of the offence the said section was not on the statute book. If that was the legal position, the limitation on the leave granted by this Court would result in an anomaly, namely, that the conviction would stand but the sentence would be quashed. The argument so presented appears to be plausible, but, in our view, not sound.

There is a real justification for this Court limiting the scope of the special leave. The High Court by mistake cited in its judgment the provisions of s. 6(1) of the Act instead of s. 6(1-A) thereof. If the conviction was under s. 6(1) the maximum sentence permissible on the first offence thereunder was only fine which may extend to Rs. 100. Presumably on the assumption that the conviction could be sustained under s. 6(1), even if s. 6(1-A) was not on the statute book —there may be justification for this view, as the words "wireless telegraphy apparatus" in s. 6(1) are comprehensive enough to take in "wireless telegraphy transmitter"—this Court gave leave limited to the question of sentence. The inconsistency, if any, was the result of the appellant's presentation of his case at that stage, and he cannot now be allowed to take advantage of his default to enlarge the scope of the appeal.

That apart, there are no merits in the contention. At the outset it would be convenient to read the relevant provisions of the three Acts :

" *The Indian Wireless Telegraphy Act, 1933.*

S. 3 : Save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act.

S. 6 (1) : Whoever possesses any wireless telegraphy apparatus in contravention of the provisions of section 3 shall be punished in the case of the first offence, with fine which may extend to one hundred rupees, and, in the case of a second or subsequent offence, with fine which may extend to two hundred and fifty rupees.

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The Indian Wireless Telegraphy (Amendment) Act, 1949.

S. 5. Amendment of section 6, Act XVII of 1933.

In section 6 of the said Act,—

.....

(ii) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1A) Whoever possesses any wireless transmitter in contravention of the provisions of section 3 shall be punished with imprisonment which may extend to three years, or with fine which may extend to one thousand rupees, or with both."

REPEALING AND AMENDING ACT, 1952.

S. 2 : The enactments specified in the First Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

The First Schedule

Year	No.	Short title	Extent of repeal
1	2	3	4
1949	XXXI	The Indian Wireless Telegraphy (Amendment) Act, 1949	The whole

S. 4. The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment

has been applied, incorporated or referred to ;

.....".

The substance of the aforesaid provisions may be stated thus : The Act of 1949 inserted s. 6(1-A) in the Act of 1933. The 1949 Act was repealed by the 1952 Act, but the latter Act saved the operation of other enactments in which the repealed enactment has been applied, incorporated or referred to. The first question that arises for consideration is whether the amendments inserted by the 1949 Act, in the 1933 Act were saved by reason of s. 4 of the 1952 Act.

The general object of a repealing and amending Act is stated in Halsbury's Laws of England, 2nd Edition, Volume 31, at p. 563, thus :—

> "A Statute Law Revision Act does not alter the law, but simply strikes out certain enactments which have become unnecessary. It invariably contains elaborate provisoes."

In *Khuda Bux* v. *Manager, Caledonian Press* (1), Chakravarti, C.J., neatly brings out the purpose and scope of such Acts. The learned Chief Justice says, at p. 486 :—

> "Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendments to the main Acts, those

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Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts which in England are called Statute Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care,.....".

It is, therefore, clear that the main object of the 1952 Act was only to strike out the unnecessary Acts and excise dead matter from the statute book in order to lighten the burden of ever increasing spate of legislation and to remove confusion from the public mind. The object of the Repealing and Amending Act of 1952 was only to expurgate the amending Act of 1949, along with similar Acts, which had served its purpose.

The next question is whether s. 4 of the Act of 1952, saved the operation of the amendments that had been inserted in the Act of 1933 by the repealed Act. The relevant part of s. 4 only saved other enactments in which the repealed enactments have been applied, incorporated or referred to. Can it be said that the amendments are covered by the language of the crucial words in s. 4 of the Act of 1952, namely, "applied, incorporated or referred to". We think not. Section 4 of the said Act is designed to provide for a different situation, namely, the repeal of an earlier Act which has been applied, incorporated or referred to in a later Act. Under that section the repeal of the earlier Act does not affect the subsequent Act. The said principle has been succinctly stated in Maxwell

on Interpretation of Statutes, 10th Edition, page 406 :—

> "Where the provisions of one statute are, by reference incorporated in another and the earlier statute is afterwards repealed the provisions so incorporated obviously continue in force so far as they form part of the second enactment."

So, too, in Craies on Statute Law, 3rd Edition, the same idea is expressed in the following words, at p. 349 :—

> "Sometimes an Act of Parliament, instead of expressly repeating the words of a section contained in a former Act, merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case the "rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second"."

The Judicial Committee in *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society, Ltd.* (1), endorsed the said principle and restated the same, at p. 267 thus :—

> "This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs : "The repeal by this Act of any enactment shall not affect

(1) L.R. Ind. App. 259

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any Act.....in which such enactment has been applied, incorporated or referred to." The independent existence of the two Acts is, therefore, recognized ; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

It is, therefore, manifest that s. 4 of the 1952 Act has no application to a case of a later amending Act inserting new provisions in an earlier Act, for, where an earlier Act is amended by a later Act, it cannot be said that the earlier Act applies, incorporates or refers to the amending Act. The earlier Act cannot incorporate the later Act, but can only be amended by it. We cannot, therefore, agree with the view expressed by the Punjab High Court in *Mohinder Singh* v. *Mst. Harbhajan Kaur* (1), and in *Darbara Singh* v. *Shrimati Karnail Kaur* (2), that s. 4 of the Repealing and Amending Act of 1952 applies to a case of repeal of an amending Act.

This legal position does not really help the appellant, for the case on hand directly falls within the four corners of s. 6-A of the General Clauses Act, 1897 (X of 1897). The above section reads :—

"Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter,

(1) I.L.R. 1955 Punjab 625
(2) 61 P.L.R. 762

then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

As, by the amending Act of 1949, the text of the Act XVII of 1933 was amended by the insertion of s. 6(1-A) therein, the repeal of the amending Act by the 1952 Act, did not affect the continuance of the amendment made by the enactment so repealed. It is said that for the application of s. 6-A of the General Clauses Act, the text of any enactment should have been amended; but in the present case the insertion of s. 6(1-A) was not a textual amendment but a substantial one. The text of an enactment, the argument proceeds, is the phraseology or the terminology used in the Act, but not the content of that Act. This argument, if we may say so, is more subtle than sound. The word "text", in its dictionary meaning, means "subject or theme". When an enactment amends the text of another, it amends the subject or theme of it, though sometimes it may expunge unnecessary words without altering the subject. We must, therefore, hold that the word "text" is comprehensive enough to take in the subject as well as the terminology used in a statute.

Another escape from the operation of s. 6-A of the General Clauses Act is sought to be effected on the basis of the words "unless a different intention appears". The repealing Act does not indicate any intention different from that envisaged by the said section. Indeed, the object of the said Act is not to give it any legislative effect but to excise dead matter from the statute book. The learned Counsel placed before us the historical background of the amending Act with a view to

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establish that the intention of the legislature in passing the said Act was to expurgate s. 6(1-A) from the statute as it was redundant and unnecessary. It is said that the Indian Telegraph Act, 1885 (XIII of 1885) provided for the offence covered by s. 6(1-A), and, therefore, the legislature though, by the Act of 1949, inserted the said section in the Act of 1933, removed it in the year 1952, as the said amendment was unnecessary and redundant. There is no foundation for this argument, and the entire premises is wrong. Section 20 of Act XIII of 1885 reads :

> "S. 20(1) : If any person establishes, maintains or works a telegraph within India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and in any other case, with a fine which may extend to one thousand rupees."

Though the words are comprehensive enough to take in a wireless transmitter, the section does not prohibit the possession of a wireless apparatus. As the Act only gave power to control the establishment, maintenance and working of wireless apparatus, in practice it was found that the detection of unlicensed apparatus and the successful prosecution of the offenders were difficult, with the result that the State was losing revenue. To remove this defect, Act XVII of 1933 was passed to prohibit the possession without licence of a wireless apparatus. Under s. 6, the penalty for such illegal possession of a wireless telegraphy apparatus was made an offence, but the sentence

prescribed was rather lenient. Subsequently, the legislature thought that the possession of a wireless transmitter was a graver offence, sometimes involving the security of the State, and so an amendment was introduced in 1949 constituting the possession of such apparatus a graver offence and imposing a more severe punishment. Therefore, it cannot he said that s. 6(1-A), inserted in the Act XVII of 1933 by the amending Act of 1949, is either covered by the provisions of the Indian Telegraph Act, 1885, or a surplusage not serving any definite purpose. Even from the history of the legislation we find it not possible to say that it disclosed an intention different from that envisaged in s. 6-A of the General Clauses Act.

For the aforesaid reasons, we hold that s. 6(1-A) of the Act continued to be on the statute book even after the amending Act of 1949 was repealed by Act XLVIII of 1952, and that it was in force when the offence was committed by the appellant.

The appeal fails and is dismissed.

B.R.T.

FULL BENCH

Before Falshaw, Dulat and Dua, JJ.

CHANAN DAS MUKHI,—*Petitioner.*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 62 of 1958.

1959

Sept., 15th

Displaced Persons (Claims) Act (XLV of 1950)—Section 2—Notification issued by the Central Government under, describing the property in respect of which a claim