

COMPANIES—RESTORATION TO THE REGISTER*

In re Repetition Goods Pty. Ltd.

In view of the decision of O'Bryan J. in *Re Camera Illustrator's Pty. Ltd.*¹ it is unfortunate that a decision which tends in a different direction, as does the instant case, offered so little scope for the reporter.

In *Re Camera Illustrator's* a company registered under the Companies Act 1928 was, after service of the requisite notices, struck off the register in 1936. In 1938 the majority shareholder died. In 1945 his widow, who held the remaining shares, and his executors, having recently discovered that the company still "owned" some £80 worth of equipment applied to the court for the restoration of the company to the register so that the assets could be realised. The difficulty they had to overcome was to show that their application was within the statutory time-limits. The 1928 Act under which the company had been incorporated provided no time limit for such applications. In 1931, Act No. 4005 provided that all such applications should be made within two years from the date on which the company was struck off the register. The *Companies Act* 1938 repealed the existing legislation and by Sec. 295 (6) provided that applications might be brought within fifteen years from the date of striking off.

It was argued for the applicants that the effect of these acts was as follows:—the 1928 Act fixed no limit, the 1931 Act limited the time to two years and the 1938 Act extended the time to fifteen years.

O'Bryan J. refused the application, considering that it should have been brought within the period limited by the 1931 Act (under which the company had been struck off the register): that the 1938 Act being a repealing, not an amending, act did not revive the right to an extended period for the application as it was governed by Sec. 6 (2) (b) of the *Acts Interpretation Act* which provides that a repealing act shall "not affect the previous operation of any enactment so repealed or anything . . . suffered under any enactment so repealed," and that the loss of the right to restoration was something so "suffered."

His Honour said that this was not merely a question of interpreting an amending act but of construing a repealing act with the consequences of the antecedent statute being repealed expressly provided for; further the limitations of time in the relevant sections were not merely procedural but conditions attaching to the right to apply for restoration to the register—i.e. substantive and not adjective law.

The circumstances in *Re Repetition Goods Ltd.*² were somewhat similar. In this case a company had been registered under the Companies Act 1915 and had become the registered proprietor of land in 1928. In 1930 the land was leased, the tenant paying rent to the two shareholders who held the majority of shares in the company. In 1931 it became apparent that the business was not profitable and the company was struck off the register. The 1931 amendment to the Companies Act did not come into operation until December of that year. The abovementioned

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1. [1945] V.L.R. 195; [1945] A.L.R. 182.

2. Unreported.

tioned land was not disposed of, but remained in the name of the company, the largest shareholder (who had originally provided the purchase money for the land) receiving the rents.

In 1946 the former shareholders brought a petition requesting the restoration of the company to the register for the purpose of disposing of the land. The grounds for the petition were taken from Sec. 295 (6) of the 1938 Act—that on the day the company was struck off the register it was carrying on business or otherwise that it was just that the company should be restored to the register.

The petition was heard in July 1946—i.e. just less than 15 years after the company was struck off the register. For the petitioner it was argued that the decision in *Re Camera Illustrators* was wrong and that the time for the bringing of petitions was limited by the act in force at the time the petition was brought—i.e. the 15 years provided by the 1938 Act: alternatively it was argued that, if the earlier decision was correct, it did not affect the present position as at the time the company was struck off the register there was no limit to the period in which a petition could be brought for restoration, and if O'Bryan J.'s reasoning obtained the subsequent amendment in 1931 and the repeal in 1938 of the existing legislation did not destroy the right existing at the date of the striking off to make application for restoration to the register at any time.

Herring C.J. who heard the petition reserved his decision and subsequently without giving formal reasons made the order requested in the petition. It is unfortunate that this decision has passed unnoticed, as the results that flow from any extension of *Re Camera Illustrators* may well work some hardship, for the alternative method of disposal of assets as provided by Sec. 297-8 require the sale by the Registrar-General and the payment into court of the proceeds which are then trust moneys to be governed by Sec. 63 of the Trustee Act so far as applicable. Accordingly it would seem that no money so paid in could be recovered more than six years after the date on which the company was struck off the register. In *Re Repetition Goods* this would have worked great hardship on the person who originally provided the purchase money for the land, and had remained the "lessor" of it for some sixteen years—and this in the face of apparently clear and unambiguous words in the existing act regulating such matters. In the event it was not so, but as a possibility it still remains—e.g. if this company had been struck off the register in 1932 instead of 1931, there would have been the situation visualised.

For the present the matter must rest there, and further decisions which may resolve the apparently conflicting trends in the two cases mentioned above must be awaited.

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