proceeding in respect of the application under S. 153-C of the Come pains Act of 1913 is continued even after the repeal of that Act, it follows that the District Judge continues to have jurisdiction to entertain it. A 1960 SC 794 (796).

A case of suppression is outside the section. Section 24 is not applicable to Electricity Rules, 1922 which have been superseded by Electricity Rules, 1937. A 1941 Bom. 100 (102) : 42 Cri LJ 588 : 43 Bom LR 99.

Section 24 does not purport to put an end to any notification. All it does is to continue a notification in force in the stated circumstances, even after the Act under which it was issued is repealed. A 1960 SC 794 (796) : 1960 SCJ 760.

Once the statutory fiction contained in S. 24 is made operative, the rules, regulations and by-laws made under the old Act become as effectively the rules, regulations and bye-laws under the new Act as if they had been made under the new Act. A 1958 Madh Pra 162 (167) : 1958 Cri LJ 767 : 1958 MPLJ 225 (DB).

Not applicable to state Acts.— [Deep Chand v. State of Uttar Pradesh , 1959 (Sup) 2 SCR 8 : 1959 SCA 377 : 1959 SCJ 1089 : ILR (1959) 1 All 293 : AIR 1959 SC 648.]

MISCELLANEOUS

25. *Recovery of fines.*— *Sections 63 to 70 of the* [1]********* *Penal code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any act, Regulation, rule or bye-law unless the act, Regulation, rule or bye-law contains an express provision to the contrary.*

1. The word "Pakistan" was omitted, ibid. Art. 13.

Scope and applications

Order for payment of fine and in default imprisonment is legal-By virtue of S 25 of the general clauses Act. AIR 1958 Andb Pra 707.

"Subject to the provisions of any law for the time being in force".— Application for the custody of minor under S. 9 or 25. Guardians and Wards Act can be made to the District Court if the minor resides within the jurisdiction of that Court. (1890) AIR 1958 Raj 221 (DB).

This section affords itself, an example of legislation by referential incorporation. It deals with the (i) issue, and (ii) execution, of warrants for the levy of fines. It is contemplated that the particular Act, Regulation, rule or bye-law under which any sentence or penalty of fine may be imposed might it self provide for the mode in which and the procedure by which the fine so imposed or levied should be recovered and might itself contain adequate provisions for the issue and execution of warrants for the levy of fines and might even provide for

imprisonment of the person subject to such fine in the event of his default of the payment thereof. In that case the provisions so prescribed or the mode so laid down under that particular Act, Regulation, rule or bye-law shall alone apply and section 25 of the General Clauses Act will have no application, because the more special provisions of that particular Act, Regulation, rule or bye-law shall override the general principle contained for recovery of fines in section 25 of the General Clauses Act.

The word "Act" occurring in this section includes an Ordinance, vide section 30 of the General Clauses Act.

The section applies to all Acts and Regulations, and it has been held to apply, with retrospective effect.

The provisions of section 64 and 67 of the Penal Code, have been held to be applicable, by virtue of section 25 of the General Clauses Act, to the fines to the imposed in accordance with the rules framed under the Sugarcane Act. 1939, because when an offender is convicted of an offence punishable with fine under a special or local law, although such law-has omitted to make specific provision for imprisonment in default of payment of fine, there would, always follow a power to impose a sentence of imprisonment in default of payment of such fine, by virtue of the provisions of this section read with the provisions of section 64 and 67 of the Penal Code, and such imprisonment in default of payment of fine shall be legal. U. K. Mitra v. Calcutrra Corporation. AIR 1932 Cal 63;AIR 1937 Pat 4 : ILR 16 pat 92.

26. Provision as to offences punishable under two or more enactments.— *Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.*

Scope and applications

Disappearance of evidence in respect of two offences committed by same act.— There are two offences under S. 201, by same act-Section 26 does not apply. AIR 1965 SC 1414.

Applicability.— Section 26 only applies when an act or omission is constituted an offence by two or more different enactments. It makes no difference to the application of Section 26 that the procedure laid down in two enactments with regard to the prosecution of the offender is different or even it different sentences are provided under the two enactments. State v Pandurang, ILR 91955) Bom. 984.

Acts forming offences under two sections of enactment-Prosecution can prosecute under any of them.— The mere fact that there is another section under which the accused could also be proceeded against does not take away the right of the prosecution to proceed against the other available section. The principle that unless there is anything to the contrary in the Statute under consideration an act which constitutes an offence

under two or more enactments then the offender remains liable to be prosecuted and punished under any one of these enactments is well settled in criminal jurisprudence. Its recognition is explicit in Section 26 of the General Clauses Act. As a juristic idea the same principle applies where the act constitutes an offence under two different sections of the same enactment. 1953 Cr L J 198 : ILR (1953) 1 Cal 280.

Section applies where act constituting offence falls under two or more enactments-Such case is not governed by S. 71 of the Penal Code (1860). 6 Guj LR 226 : IIR 1955) Guj 20.

Section a applies if both enactments can be held to stand. AIR 1995 NUC (Hyd) 5923 (DB).

Section 26, General Clauses Act, is wider in scope than its corresponding S. 33, English Interpretation Act 1889. Not only does it deal with an act which his an offence under the Penal Code an also under a special or local Act and an act which is an offence under two or more local Acts but also, it seems, having regard to the meaning of enactment" with an act which is an offence under two or more sections of the same Act. ILR 91953) Hyd 573.

Applicability of principle generalia specialibus non derogant.— Section 26 envisages the possibility of the same act or omission not only being an offence under different enactment's but of the accused being charged under or any of them though he shall not be punished twice for the same offence. In the presence of the provisions contained in the said section the principle of generalia specialibus non derogant cannot be applied. ILR (1953) Hyd 573.

Offences under same enactment-One requiring sanction.— Section 26 has no bearing upon the question whether prosecution should be started for an offence which required no sanction although the facts mentioned in the complaint might eventually disclose an offence which required sanction. It speaks of an offence under two enactments and it says that the offender can be liable to be prosecuted under either of those enactment's.

Even if it is assumed that this section also applies to two offences mentioned in the same enactment, it means only that the offender is liable to the prosecuted for either of those two offences. It has no reference to sanction. 1955 BLJR 183 : 1955 Cr LJ 1382.

Object.— Section 26, General Clauses Act, was enacted with a view to avoid implied repeal of the general Acts by the enactment of special Act. 58 Punj LR 79 : ILR (1956) Punj 104.

Rule as to.— Applies only when both complaints relate to same offence. ILR (1956) Bom. 685 : AIR 1961 SC 578.

Two alternative charges in same trial-Conviction for one and acquittal on other.— Where there are two alternate charges in the same trial. (Penal Code S. 409 and Prevention of Corruption Act S. 5 (2) the fact that the accused in acquitted of one of them, namely S. 5 (2), Prevention of Corruption Act, will not prevent the conviction on the other. 1958 Pat LR (SC) 17 : 1957 BLJR 376.

Act or omission constituting offence under two enactments-Conviction under both-Legality.— The act or omission constituting an offence under S. 116 of the Motor Vehicles Act is different from the act or omission constituting an offence under S. 429 of the Penal Code. The act or omission constituting the manner of driving is punishable under the former section while under the latter it is the result of any such act or omission that is the fact that wrongful loss or damages is caused which is made punishable. Each is, by itself. a separate and distinct offence. Hence Section 26 of the General Clause Act does not in validate the simultaneous conviction under both the sections. 1956 Andh WR 784 : 1957 Cr L J 627.

Applicability-Punishment of accused under S. 101, Railways Act and Sections 304-A and 337 of the Penal Code-Legality.— Section 26 of the General Clause Act has no application if the two offences are distinct.

Section 101 (c) of the Railways Act is identical with Section 337 of the Penal Code, although the maximum punishments prescribed for the two offences are different. The accused, therefore, cannot be punished under both the provisions.

Section 304-A of the Penal Code is a distinct offence. It is different from the one punishable under S. 101 of the Railways Act. That being so. Section 26 of the General Clauses Act does not apply and an accused ca be punished under that section also if the conditions thereof are satisfied. 1960 MPLJ 185 : 1960 Jab LJ 308.

Offence under Section 7 (1) (a), Lands Customs Act is not the same as offence under s. 23 (1-A) (a) of the Foreign Exchange Regulation Act and so an accused can be separately punished for it under S. 26 of the General Clauses Act. AIR 1963 Manipur 1 (8) (Pr 38).

Cattle illegally seized-Person seizing refusing to release them unless money was paid-Offence under S. 384, Penal Code held committed-Remedy-Fact that accused can be prosecuted under S. 22, Cattle Trespass Act, is no bar. (1956) 22 Cut LT 417.

Same offence.— Accused tried for a charge under S. 353 P. C. and acquitted-Subsequent trial on same facts under Section 26 (1) (a) and (h) of Bihar Sales Tax Act. Held, that offences under S. 353, P. C. and S. 26 (1) (h) of Bihar Sales Tax Act though constituted by the same act were different offences and the subsequent trial under section 26 (1) (a) was not barred. 1954 Cr LJ 653 : AIR 1954 Pat 247 (Db).

"The offender shall liable to be prosecuted and punished under either or any of those enactments."-Prevention of Corruption Act (1947). S. 5 (2)-Effect on S. 409 Penal Code.— Though both are almost identical, they can co-exist side by side-Offender can be punished under either of two-Earlier law is not put out of operation-Effect of Section 5 (2) is to add remedy and not to repeal S. 409, P. C.— There is no repeal by implication of S. 409. AIR 1952 Punj 89.

Prosecution under S. 409, Penal Code-Sanction for prosecution-Offence punishable under Section 409. P.C. and also under Section 5 of Prevention of Corruption Act under which previous sanction of the State is necessary-Prosecution under Section 409 P. C.— Prosecution has choice to prosecute under either of the provisions and prosecution under S. 409 . C. is not bad on the ground that the offence fell also under S. 5 of the Prevention of Corruption Act and the sanction for prosecution was not taken. AIR 1955 Cal 236 (DB).

Offence falling under Section 363, P. C. and also under S. 408 P. C. -Prosecution under S. 363.— Magistrate cannot avoid conviction if offence under S. 363 is proved, on the ground that the offence also fell under another section of the penal Code which required a complaint before a Court S. 26, General Clauses Act would justify such conviction. (1964) 2 Mad LJ 430.

Act offence under two enactmens-Prosecution under either-Legality.— Where an act is an offence under the provisions of two enactments which are not in conflict with each other prosecution could be resorted to under either of the enactment's. Thus the prosecution under Section 379, Penal Code for cutting and removing the branches of an avenue tree on a high road which is the property of the Government, without the permission of the authorities concerned, is not illegal. AIR 1951 Mys 25 (26) (Pys 3, 4).

Offence under S. 408. Penal Code committed by officer of co-operative society-Sanction for prosecution if necessary.— Prosecution under general law-S. 408, Penal Code maintainable and not barred because there was also a remedy under Section 47, of Co-operative Societies Act. AIR 1957 Orissa 165 (DB).

Prevention of Corruption Act (1947) S. 5 (1) (c)-Section does not repeal S. 409, Penal Code. AIR 1953 Pujn 89.— Prosecution and punishment in trial Court under Section 409 P. C. In the first appellate Court the punishment was set aside and the prosecution was to proceed under Section 5 (1) (c) of the Prevention of Corruption Act. On the ground that S. 409 P. C. was repealed by s. 5 (1) (c) of the latter Act. Held Section 409 P. C. was not repealed by the provisions of Prevention of Corruption Act. The two provisions can co-exist side by side even though the one may, to same extent overlap the other Prosecution under S. 407. P. C. 1958 Cr L J 100 AIR 1956 Pepsu 1 (DB).

Parallel provisions-(Interpretation of Statutes-Parallel provisions).— There is no principle of law of interpretation of authorize a Court to withdraw a case from the express prohibitions of one statute on the ground that the offence was also punishable, though differently in another statute. In case of two parallel provisions the prosecution may proceed under either. 1956 Cr L J 100.

Offence covered by S. 409 and S. 5 (1) (c) of Prevention of Corruption Act.— Prosecution under S. 409 is maintainable-Court cannot insist on prosecution under Section 5 (1) (c) of Prevention of Corruption Act with the sanction of the State. AIR 1954 Raj 211 (DB).

"But shall not be liable to be punished twice for the same offence".— Principle under-Second trial must be for same offence-Both in the case of Art. of the Constitution as well Section 26 of the General Clause Act to operate as a bar, the second prosecution and the consequential punishment thereunder must be for the same offense i.e. an offence whose ingredients are the same. In the case first prosecution was under S. 188. P. c. and the subsequent prosecution under Ss. 332. 342 and 307 of the P. C. and S. 7 of the criminal Law Amendment Act. Second trial was held not barred. AIR 1965 SC 87.

Section prohibits punishment for same set of facts under two sections-Trial however not prohibited.— What is prohibited under S. 26 of General Clauses Act is punishment for the same set of facts under two sections but not the trial. Consequently a trial of accused for offences under S. 161, P. Code and S. 5 (2) of Prevention of Corruption Act cannot be challenged as being prohibited by S. 26 of the General Clauses Act. AIR 1961 SC 583 and AIR 1960 Mad 27.3.

Criminal P. C. (1898) S. 403 (5)-Single act constituting offence under two laws-Conviction.— Where so far as the definition of an offence is concerned the provisions of two laws are identical, the Court should select the law under which it chooses to convict the accused because, for a single act a person can be consvicted under only one of the two laws. 51 Cr L J 1345 .

Punishments for different offences-If prohibited.— The prohibition under section 26 of General Clauses Act is against a person being punished twice for the same offence. The prohibition is not against punishment more than once for different offences. The offence punishable under S. 161 of the Penal Code is different from the offence of criminal misconduct punishable under S. 5 of the Prevention of Corruption Act though it may be that some of the ingredients of these two offences are common. 38 Mys L J 265 : 1962 Mad L J (Cri) 222.

There is no bar under S. 26 to second trial But the only bar is against two punishments. If, therefore, on the former occasion the accused has been acquitted, the Courts are not prohibited from convicting him at the second trial. AIR 1944 Mad 369 (2), Rel on. 1959 Cr L j 622.

Same act constituting offence under Section 161, P. Code and S. 5 (2). Prevention of Corruption Act, (1947)-Separate sentence under each section -Validity.— Separate sentences for the conviction under S. 161 of the Code and Section 5 (2) of the Prevention of Corruption Act are, therefore illegal since there is only one act which constitutes an offence under two enactments 1954 Cr L J 1466.

Provisions barring second trial or double punishment.— The only statutory provisions which recognise the rule against double jeopardy are provided in section 403 of the Code of criminal Procedure and section 26 of the General Clause Act.

1897. The former bars a second trial; the latter prohibits a person from being punished twice for the same offence. 8 DLR 128 S.C.

Conviction both under section 161 P.C. and under section 5(2) of Act II of 1947 valid, but sentence can be awarded only under either of the two.

Under section 26 of the General Clauses Act 1897, the accused could have been charged under either or both of the enactments but could not be punished more then once for the same offence. 8 DLR 135 S.C.

Conviction both under section 261 of the Penal Code and under section 5(2) of the Prevention of Corruption Act valid, but cannot be sentenced under both the sections 7 DLR 33.

Section 26 of the General Clauses Act operates to obviate altogether any implied repeal of one penal law by another.— The section does not deal only with the matter of punishment; it provides also that the person offending may be prosecuted under any or all the relevant enactments.

The rule contained in section 26 applies even where the subsequent enactment which may be brought into play for punishing the offender, provides a special procedure governing the trial for such an offence. 5 DLR 25.

Scope of - It protects guilty parties against double jeopardy.— This section lays down that where an act or omission constitutes an offence under two or more enactments , then the offender shall not be liable to be prosecuted and punished twice for the same offecne. Municipal Corporation of Delhi v. Shiv Shanker, (1971) 1 SCC 442.

Scope of - No bar to prosecution of offender under two enactments.— The section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. Therefore the argument that in view of the provisions of section 26 of the General Clauses Act, the Appellant can be prosecuted either under section 52 of the 1922 Act or under section 177., Penal Code and not under both the sections at the same time, has to he rejected. T.S. Baliah v. T.S.Rangachari I. T.O., (1969) 1 SCJ 890 : AIR 1969 SC 701 : (1969) 2 SCA 157 : (19690 2 Mad LJ 9 : (1969) 2 Andh WR (SC) 9 : (1969) 1 ITJ 732 : 72 ITR 787 : (1969) mad LJ (Cr) 547.

Both Prosecutions for same offence- Second Prosecution is barred.Manipur Adminstration, Manipur v. Thokchom Bir Singh. (1964) 7 SCR 123 : 1965 SCD 8 : (1965) 1 SCJ 451 : 1965 All Cr R 250 : (1965) 1 Cr LJ 120 : 1965 AWR (HC) 358 : (1965) 1 Andh LT 96 :1965 MLJ (Cr) 233: AIR 1965 SC 87.

Not applicable where offences are not same . State of Bombay v. S. L. Apte . AIR 1962 SC 578 : 63 Bom LR 491 : (1961) 2 SCA 446 : (1961) 1 Ker LR 452 : (1961) 1 Andh WR (SC) 210 : 1961 SCJ 685 : (1961) 31 Com.Cas (Ins) 39 : (1961) 1 MLJ (SC) 210 : (1961) 1 Cr LJ 725 : 1961 MLJ (Cr)331 : 1961 MPLJ 1108 : 1961 NLJ 524.

Two alternative charges - Accused acquitted of one can be convicted of another.— Where there are two alternate charge in the same trial, the fact that the accused is acquitted of one of them, will not prevent the conviction on the other. Section 26 of the General Clauses Act can be called in aid in support of this proposition. There is no question of double jeopardy. State of madhya Pradesh v. Veereshwar Rao Agnihotri ,AIR 1957 SC 592: 1957 MPC 388 : 1957 SCA 249 : 1957 BLJR 376 : (19570 1 MLJ (Cr) 482 : 1958 ALJ 567 : 1957 Cr Lj 892 : 1957 JLJ 801 : 1957 MPLJ 649 : 1957 AWR (HC) 488: 1957 SCJ 519 : 1957 SCC 317 : 1957 NLJ 503 : 1958 Pat LR (SC) 17.

Applicability.— Section 26 will not bar to two trials in respect of the two offences. Section 26 in fact contemplates those cases where the acts alleged fall within the definition of offences under the two enactments. Gopi Nath v. State, 1979 Cr LJ 414 : 1979 All LJ 159 All Cr R 124. There is no bar under this section to a second trial but the only bar is against two punishments.

What is prohibited under this section is punishment for the same set of facts under two sections but not the trial of accused on alternate charges, where acquittal on one charge is no bar to conviction on the other and is case of identical definition of the offences, the Court can select the law for choice to convict the accused. Bhagwagir Mukundgir v. State, AIR 1950 MB 58 : 51 Cr LJ 1345: AIR 1957 SC 592 at p 594 : 1957 CR LJ 892. This section has, however, nothing to do with any sanction required for starting a prosecution. K. P. Sindh v. Aftabuddin, AIR 1955 Pat 453 : 1955 Cr LJ 1982.

For a false statement in verification of an income-tax return, a person can be prosecuted both under section 177 of the Penal Code,. and section 52 of the Income Tax Act, 1922 at the same time. Section 26 of the General Clauses ACt bars punishment of the offender twice for the same offence and not the trial or conviction under both the enactments and the same offence means the identity of its ingredients, coupled with a community of time, place, person and commodity. Municipal Corporation of Deli v. Moti Lal, 1972 Cr LJ 1536 at p. 1540 : 74 Punj L (D) 316 (FB): (1969) 1 ITJ 732 : (1969) 72 ITR 787

Under section 26 an accused should not be made to suffer punishment more than once for the same acts or omission because they constitute offences under two or more enactments. The section does not prevent the accused from being charged with and tried for the same acts or omissions under different provisions of law. It does not even prevent an accused from being convicted in respect of each of these offences or from being sentenced separately in respect of each of the offences, so long as he is not made to suffer punishment twice for the same

act or series of acts. If the Court makes the punishment run concurrently it does not violate the provisions of section 26 of the General Clauses Act. Hari Rachukandi v. State of Maharashtra, 73 Bom. LR 891.

Object of the section.— The section was enacted to avoid implied repeal of General Clauses Act by special enactments. Jogesh Chandra Choudhry v. Kshirode Ranjan Bhattacharji, (1961) 2 CR LJ 564 (Tripura) ; State v. Dina Noth, AIR 1956 Punj 85 : 1956 Cr LJ 415. Therefore, section 26 will apply when both the enactments stand in operation, when either of them has not been necessarily repealed by the other. State v. Bhimrao, ILR 1954 Hyd 558 at p 561 : AIR 1955 NUC (Hyd) 5923 (DB).

Section 26 has no application to an offence of abatement for which there can be no conviction under the Penal Code but only under the Salt Act, 1882. Sangam Modho v. Ramnarain, AIR 1930 Oudh 497 at p. 499 : 32 Cr LJ 104.

But the imposition of a civil penalty, such as confiscation or seizure a penal tax, will not thereby absolve the transgressor from liability to criminal prosecution. The application of the doctrine of "double jeopardy" is not attracted as the imposition of civil penalties will not amount to conviction and sentence. Thus section 18 of the Sea Customs Act would not preclude proceeding under section 167 (81) of the same Act in those case where the Customs Officers have levied the penalties of confiscation of fine. Mohammad Kasim v. Assistant Collector of Excise, (161) 2 Mad LJ 382 (FB).

Section 26 has no application to two offences under the same section of an enactment, e. g., disappearance of evidence in respect of two crimes committed by the same act which would be offences under section 201 of the Penal Code. Roshan Lal v. State of Punjab, AIR 1965 SC 1413 : (1965) 2 Cr LJ 426.

Section 26 no doubt provides for prosecution and punishment under either or any of the enactment. But where the burden of proof differs in respect of prosecutions under the various enactments, it is clear that there cannot be joinder of charges at a common trial, as it would be highly prejudicial to the accused. Nithenga Ham v. Assistant Collector of Central Excise and Land Customs AIR 1963 Manipur 1.

Section 26 has no bearing upon the question whether prosecution should be started for an offence which required no sanction although the facts mentioned in the complaint might eventually disclose an offence which required sanction. it speaks of an offence under two enactments and it says that the offender can be liable to be prosecuted under either of those enactments. Even if it be assumed that the section applies to two offences mentioned in the same enactment, it means only that the offender is liable to be prosecuted for either of those two

offences; it has no reference to sanction. K. P. Sinha v. Aftabuddin, AIR 1955 Pat 453 ; Waman Sambhaji v. Narhari Sambhaji, AIR 1968 Bom. 124 ; T. S. Baliah v. T. S. Rangachari, AIR 1969 Mad 145 ; (1964) 2 Ma LJ 430 at p 432. Conviction under section 363 cannot be avoided even if the offence charged also falls under section 498 of the Penal Code. The Court has however, a discretion in the choice of the provisions under which the offender may be punished, and the discretion must be in favour of the provisions specially introduced to deal with offences of the kind in the case. Public Prosecutor v. Avvaru Annappa, AIR 1969 Andh Pra 278 : 1969 Cr LJ 1022.

Act or omission.— The section applies only when an act or omission is constituted an offence by two or more different enactments. The prosecution must, thus, be with reference to the law under which the offence is created and, then, the punishment must also be in accordance with what that law has prescribed. S. A. Venkataraman v. Union of India, AIR 1954 SC 375 at p 379 : 1954 Cr LJ 993. It makes no difference to the application of section 26 that the procedure laid down in two enactments with regard to the prosecution of an offender is different or even if different sentences are provided in the two enactments. State v. Bhogilal, AIR 1931 Bm. 409.

"Act" is no where defined. It must necessarily be something short of a transaction which is composed of a series of acts, but cannot, in ordinary language, be restricted to every separate willed movement of a human being for when we speak of an act of shooting or stabbing we mean the action taken as a whole, and not the numerous separate movements involved. Emperor v. Bhogilal, AIR 195:31 Bom. 409.

Distinct offences under same enactment or distinct enactments.— Section 26 of the General Clauses Act merely bars only punishment of offender twice for the same offence and not trial or conviction under both the enactments. T. S. Baliah v. T. S. Rangachari, Income-Tax Officer, AIR 1969 SC 701 at p 706 : (1969) I SCJ 890, T. S. Baliah v. T. S. Rangachari, AIR 1969 Mad 145. This section does deal only with an act which is an offence under the Penal Code and under a special or local law and an act which is an offence under two or more local Acts, but also with an act which is an offence under two or more sections of the same Act. K. Jayarama Iyer v. State of Hyderabad, AIR 1954 Hyd. 56 : 55 Cr LJ 464.

The two laws making the same Act or omission punishable can however, co-exist side by side. Bup Narain v. State, AIR 1952 All 35 ; AIR 1953 Mad 137 ; Mohomed Ali v. State, AIR 1953 Cal 681 ; State v. Salubrayo Govindrao, AIR 1954 Bom. 549 ; Om Prakash v. State, AIR 1955 All 275 at p 281. Where an act is an offence under the provisions of two enactments which are not in conflict with each other, prosecution could be resorted to

under either of the enactment. Muniswamappa v. Government of, AIR 1951 Mys 25 ; Badri Prasad v. State, AIR 1953 Cal 28 Gopi Nath v. State, 1979 Cr LJ 414 at p 417 : 1979 All LJ 159. When the same facts have disclosed primarily and essentially two distinct offences, one of them graver than other and also requiring prior sanction, it would be at choice of prosecution to put the accused for trial for either of the two. R.P. Oberoi v. State 1982 Rajdhani LR 677.

Section 26 will have no application to separate sentences passed for offences under section 411 and section 414 of the Penal Code. Haroon Mohamed v. State of Maharashtra, 1975 Mah. r R 204 at pp. 205, 206, relying on Jayaram Vithoba v. State of Bombay, (1955) 2 SCR 1049 : AIR 1956 SC 146. But a conviction and sentence under section 19 of the Arms Act, 1878 and section 30 of Police Act, on same facts, is barred. King Emperor v. Paka, (1906) 3 Low Bur Rul 213 at p 218 (FB). Where loss of life occurred due to omission to inspect the working place in a mine as required by the provisions of the Code mines Regulation, the omission is punishable under Section 72-C (1) of the Mines Act and section 304-A of the Penal Code. The accused can be prosecuted under section 304-A Penal Code. Ganeshgir v. State of Madhya Pradesh, 1966 MPLJ 641 : 1966 Jab LJ 565. A person can be prosecuted and convicted both under the special enactment and also the general law, but he can be punished only once either under the former or the latter. Emperor v. Joti Prasad, AIR 1932 All 18. The Court should select the law under which it chooses to punish. Bhagwangir v. State, AIR 1950 MB 58.

The provisions of this section can be complied with merely by the direction that such imprisonment or transportation shall run concurrently with that imposed in the previous case. Arsala Khan v. Emperor, AIR 1953 Pesh 18.

Separate sentences under section 5 (2) of the Prevention of Corruption Act, 1947 and section 161 of the Penal Code, are not legally sustainable there being one act constituting the offene under both the enactments. In re P. S. Arvamudha Iyengar, AIR 1960 Mad 27 : 1960 Cri LJ 92.

Section 26 do apply where a person is prosecuted for an act constituting offences under section 279 and 338 of the Penal Code as well as section 116 of the Motor Vehicles Act, 1939. Jayanti Lal Rup Chand Shah v. State of Gujarat, (1965) 6 Guj LR 226.

In State of Bihar v. Mangal Singh, AIR 1953 Pat 50 : 1953 Cri LJ 518 (DB), the accused has been tried and convicted under section 121 of the Motor Vehicles Act, 1939 but that conviction was not held to stand as bar in his being held guilty of offences under sections 279, 330 and 304-A and of the Penal Code. In Bali Sahu v. Emperor. 3 Pat LJ 433 (DB), it was held

that separate sentences for possession and sale under the Opium Act, 1878 and the Bihar and Orissa Excise Act, 1915 was not in contravention of section 26 of the General Clauses Act.

The offences of obstructing or molesting a public servant in the performance of his duty and the offence of assaulting or using criminal force to a public servant in the execution of his duty are two distinct offences though arising out of the same facts and conviction for both offences is good. Chhote Lal v. Emperor, AIR 74 : 1936 ALJ 427.

Causing disappearance of evidence of two offences, one under section 330 and another under section 201 of the Penal Code would constitute two offences, one under section 330 and another under section 201 of the Penal Code would constitute two offences though no separate sentences need be passed with regard to disappearance of evidence of offence under section 330. But, the case is not conferred by section 26. Roshan Lal v. State of unjab, AIR 1965 SC 1413 : (1966) 1 SCJ 233.

Section 26 envisages the possibility of the same Act or omission not only being an offence under different enactments but of the accused being charged under either or any of them, though he shall not be punished twice for the same offence. The language employed in section 26 of the General clauses Act shows that the emphasis is on the word "punishment" and not so much on prosecution as what is ultimately prohibited is imposition of punishment twice for the same offence. In re. P. Bapanaiah, 1970 Cr LJ 199 : AIR 1970 Andh Pra 47.

Section 26 of the Genial Clauses Act contemplates that a prosecution under the general law can be proceeded with. State v. Banchanidhi, AIR 1957 Orissa 165.

The section has, however, no application if the offences are distinct. Velgoda Panchayat v. Chinna Venkata, AIR 1932 Mad 537.

A person found in possession of a stolen revolver may be tried and punished both under Section 411 of the Penal Code and section 19 of the Arms Act. The important point to be noted is that it is not the same act or omission which constitutes the offence under the two enactments. Reoti v. Emperor, AIR 1933 All 461 ; State of U. P. v. Probhat Kumar, AIR 1966 All 349. Prosecutions under section 25 of Arms Act and section 411 of P. C.; second trial not barred under section 380 (5) under Criminal procedure Code, 1773. Genesh Cir v. State of Madhya Pradesh, AIR 1966 MP 311.

Where a new offence is created under any enactment the accused must be dealt with in accordance with the provisions of that enactment. Where on the other hand, a statute makes an act, already punishable under some former law, punishable and there is nothing in the later enactment to exclude the of the

former one, then the accused person can be proceeded against under either of the enactments. Madho Prasad v. State, AIR 1963 MB 139 at p. 141. An offence under section 5 (1) (c) of the Prevention of Corruption Act, is almost identical with an offence under section 409 of the Penal Code, when it is committed by a public servant. For all practical purposes they are one and the same offence. Two laws under which the same act or omission is punishable can co-exist side by side. Where a new law makes an act punishable, which is already penal under an existing law and there is nothing in the later enactment which either expresses or implies that the operation of the earlier laws is excluded, an offended can be prosecuted and punished under either of the two enactments. The earlier law will not be put out of operation merely because there is some change in procedure or some difference in penalties. Om Pakash v. State, AIR 1955 All 227 ; Amarendra Nath Roy v. State, AIR 1955 Cal 235 Pervention of Corruption Act cannot in view of the amendment of section 5 (4) be held to repeal section, 409 of the Penal Code ; AIR 1952 Punj 89 Held no longer good law.

A special law does not repeal the general law unless the intention is made clear in that law. State v. Gulab Singh, AIR 1954 Raj 211 (AIR 1953 Cal 681 ; AIR 1952 Pun 89 : AIR 1953 Punj 249.

The broad proposition that section 26 is ruled out when there is repeal of an enactment followed by a fresh legislation is not correct. Section 26 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. Venkatasubba Rao v. Ganapati china Knakaya, 1955 Andh WR 204.

Offence under General as well as Special Enactments.— Subject to the overriding consideration of double jeopardy, there is no bar in limine to prosecution for an offence under the General Act even in case where such offence is also punishable under a Special Act. N. K. Jhajharia v. L Chandra, 1974 Lab IC 685 : 78 CWN 697. A prosecution which is otherwise maintainable, would lie both under the Special Act and the General Act, subject, however, to the overriding consideration that the accused shall not be liable to be published twice for the same offence. Nathmull v. Salil Kumar, AIR 1971 Cal 93 : 74 Cal WN 792. There is no bar in limine on the prosecution to proceed under the General Act on an offence which otherwise lies merely because the same facts also an offnce under the special Act subject only to the overriding consideration of

double jeopardy. Chandrika Sao v. State o Bihar, AIR 1967 SC 170 : 1967 Cr LJ 261 , relied on in Nothmull v. Salil Kumar, AIR 1971 Cal 93.

When the same offence falls under two Acts, one general and other special, prosecution under General Act whereunder penalty is given is maintainable. Righi Ram Mitra v. Prahlad Chandra Das, ILR (1972) 1 Cal 72 at p 77 .

There is no legal bar to the prosecution for both offences under Income Tax Act, and under the Penal Code. Gulab Chand Sharma v. H. P. Sharma, Commissioner of Income-tax, 1975 Tax, LR 176 (Del). The offence under section 353, Penal Code being a graver offence than that under section 26 (1) (h) of Bihar Sales Tax Act, 1947, there is no bar in choosing to prosecute the accused under the former. Without any objection as to acting colourably. AIR 1967 SC 170 at p. 173 : 1967 Cri LJ 261. The jurisdiction of the Magistrate to try an offence of breach of trust is not barred because the facts also constitute an offence under section 103 of the Insolvency Act. William Plythe Petrett v. Emperor, AIR 1927 Mad 1018 (1) : 28 Cri LJ 928.

Provisions barring second trial or double punishment.— The only statutory provisions which recognise the rule against double jeopardy are provided in section 403 of the Code of criminal Procedure and section 26 of the General Clause Act, 1897. The former bears a second trial; the latter prohibits a person from being punished twice for the same offence. 8 DLR 128 S.C.

Conviction both under section 161 of the P.C. and under section 5(2) of Act II of 1947 valid, but sentence can be awarded only under either of the two.

Under section 26 of the General Clauses Act 1897, the accused could have been charged under either or both of the enactments but could not be punished more than once for the same offence. 8 DLR 135 S.C.

Conviction both under section 261 of the Penal Code and under section 5(2) of the Prevention of Corruption Act valid, but cánnot be sentenced under both the sections 7 DLR 33.

Section 26 of the General Clauses Act operates to obviate altogether any implied repeal of one penal law by another.— The section does not deal only with the matter of punishment; it provides also that the person offending may be prosecuted under any or all the relevant enactments.

The rule contained in section 26 applies even where the subsequent enactment which may be brought into play for punishing the offender, provides a special procedure governing the trial for such an offence. 5 DLR 25.

It protects guilty parties against double jeopardy.— This section lays down that where an act or omission constitutes an offence under two or more enactments , then the offender shall not be liable to be prosecuted and punished twice for the same offecne. [Municipal Corporation of Delhi v. Shiv Shanker, (1971) 1 SCC 442.]

No bar to prosecution of offender under two enactments.— The section provides that where an act or omission constitutes

an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. [T.S. Baliah v. T.S.Rangachari I. T.O., (1969) 1 SCJ 890 : AIR 1969 SC 701 : (1969) 2 SCA 157 : (19690 2 Mad LJ 9 : (1969) 2 Andh WR (SC) 9 : (1969) 1 ITJ 732 : 72 ITR 787 : (1969) mad LJ (Cr) 547.]

Both Prosecutions for same offence- Second Prosecution is barred.[manipur Adminstration, Manipur v. Thokchom Bir Singh. (1964) 7 SCR 123 : 1965 SCD 8 : (1965) 1 SCJ 451 : 1965 All Cr R 250 : (1965) 1 Cr LJ 120 : 1965 AWR (HC) 358 : (1965) 1 Andh LT 96 :1965 MLJ (Cr) 233: AIR 1965 SC 87.]

Section 26 not applicable where offences are not same .[State of Bombay v. S. L. Apte . AIR 1962 SC 578 : 63 Bom LR 491 : (1961) 2 SCA 446 : (1961) 1 Ker LR 452 : (1961) 1 Andh WR (SC) 210 : 1961 SCJ 685 : (1961) 31 Com. Cas (Ins) 39 : (1961) 1 MLJ (SC) 210 : (1961) 1 Cr LJ 725 : 1961 MLJ (Cr)331 : 1961 MPLJ 1108 : 1961 NLJ 524.]

Two alternative charges - Accused acquitted of one can be convicted of another.— Where there are two alternate charges in the same trial, the fact that the accused is acquitted of one of them, will not prevent the conviction on the other. Section 26 of the General Clauses Act can be called in aid in support of this proposition. There is no question of double jeopardy. [State of madhya Pradesh v. Veereshwar Rao Agnihotri ,AIR 1957 SC 592: 1957 MPC 388 : 1957 SCA 249 : 1957 BLJR 376 : (19570 1 MLJ (Cr) 482 : 1958 ALJ 567 : 1957 Cr Lj 892 : 1957 JLJ 801 : 1957 MPLJ 649 : 1957 AWR (HC) 488: 1957 SCJ 519 : 1957 SCC 317 : 1957 NLJ 503 : 1958 Pat LR (SC) 17.]

[1]***27. Meaning of service by post.***— *Where any [2][Act of Parliament] or Regulation made after the commencement of this act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*

1. Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 26.
2. Subs. by P.O. No. 147 of 1972, Art. 7 for "Central Act".

Scope and applications

Notice issued in time but served out of time.— Section applies even to such cases. AIR 1964 SC 1742.

Presumption under-When arises-Expression "unless contrary is proved" refuse both to mode and time of service.— The question of presumption under S. 27 arises only in the

absence of other evidence. Where however the sender of the letter produces the postman who is alleged to have delivered the letter and such postman is not believed by the Court, no question of presumption under the section arises. The words unless the contrary is proved" in the section refer both to the service of the letter and the time of service and therefore, even when a notice has been posted in a properly addressed prepaid registered cover, the presumption as regards its service is not conclusive but is rebutable. AIR 1932 All 374 : 1963 All W R (HC) 413.

Notice by registered post sent to correct address-Refusal to accept-Due service. AIR 1955 NUC (All) 1514 (DB).

Notice by post to assesses firm.— Receipt by employee of firm-Sufficiency of notice-Presumption under S. 27, General clauses Act. AIR 1953 All 137 (DB).

Service of notice by post.— Notice to quit duly addressed and sent by registered post is good service. AIR 1955 NUC (Assam) 2838 (DB).

Service by post.— Notice letter sent by registered post and acknowledgment received-Contention that notice was not received by the defendant-Held there was a presumption of service of notice under S. 27, General Clauses Act. AIR 1953 Assam 206 (DB).

Service through post-Cover returned as refused-Sufficiency of service. AIR 1955 NUC (Bhoal) 1783.

Summons sent by registered post-Summons refused by defendant and endorsement made to that effect -Held summons was served. AIR 1956 Bom. 144.

Notice sent by registered post-Notice shall be deemed to be effective. AIR 1958 Cal 251 (DB).

Notice sent by registered post-Presumption of proper service-Rebuttal of presumption-Onus of proof-What Section 27, General Clauses Act, provides for is only a presumption and a presumption of fact can undoubtedly be rebutted. AIR 1956 Cal 537 (DB).

Service by post-Under Section 106, Transfer of Property Act read with S. 27 General Clauses Act, when a notice has been posted properly addressed and prepaid and in a registered cover, a refutable presumption arises that service of notice was offected at the time at which the letter would be delivered in the ordinary course by post. AIR 1955 NUC (Madh Bha) 3022 (DB).

Service of notice by registered post-Postman endorsing refusal-Postman not examined to prove refusal -Endorsement of refusal held sufficient to justify presumption of service. AIR 1918 PC 102 AIR 1950 All 857.

Service of notice by post-Presumption-Postal peon's endorsement of refusal on registered letter-Presumption of service could arise under S. 27, General Clauses Act. AIR 1957 Punj 284 (DB).

Service of notice by post - Presumption of due service though refutable, mere denial by the addressee that he did not receive the notice is not sufficient to rebut the presumption. 22 DLR (1970) 664.

Notice seat by registered post returned with the endorsement 'left' on the registered cover by the postman although at the material time the addressee was residing in the particular address - Presumption is that the notice was duly tendered te the addressee and the addressee must be fixed with constructive notice. 22 DLR (1970) 664.

Presumption when a document has been sent in due course by post, as regards its delivery to the addressee.— Section 27 of the General Clauses Act provides that where any Central act authorizes or requires any document to be served by post, where the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then unless a different intention appears the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a latter containing the document and unless the contrary is proved, to have been effected at the time of which the letter would be delivered in the ordinary course of post. This is an inference to be raised by law on posting by registered post a properly addressed and prepaid letter containing the document. 17 DLR (1965) 27.

Service of notice by post.— It is found from the record that the letter was properly addressed and the cover containing the notice was sent by registered post to the address of the plaintiff as given by him in the deed of agreement and the same being his last kwon address, presumption arises that the notice was duly tendered. This presumption having not been rebutted the addressee must be fixed with constructive notice. 43 DLR (1991) 407.

Expression 'issued' and 'served' are used as interchangeable terms both in dictionaries and statutes. 'Issued' means of act sending out put into circulation, delivery with authority or delivery". Nurul Islam vs. Abdul Malek. 38 DLR (AD) 1986.

Presumption following posting of registered letter.

When a letter is sent by registered post there arises a presumption according to the provision of section 27 of the General Clauses Act that the letter duly reached the addressee and this presumption is further strengthened by acknowledgment receipt of the letter. Gladstone Wyllie & Co. Ltd. Vs. A.B.M. Shayesta Khan. 28 DLR (1976) 21.

This section does not lay down any inflexible or conclusive presumption as to service of notice by registered post. What it states is that the Court might presume service of have been

effected by ordinary course of post if than circumstances were present unless the contrary was proved. The section does not exclude evidence in rebuttal of the presumption. M. K. Ramu Mudaliar v. Kanthamani Natrajan, (1979) 1 MLJ 946 : 92 LW 5.

Punishment for contravention of a rule during period prior to commencement of such rules is not saved by this section. Union of India v. Samarendra Mohan Maitra . 1979 Lab IC 1276 (DB) (Cal).

The presumption contemplated under this section applies to summons on defendant served by registered post. Bai Shanta v. Khalsa Ramjibhai Chhota La, AIR 1956 Bom. 144.

Section 27 would apply to mode of service by hanging or affixation, provided it is established that the relevant place was ordinary place of residence of opposite-party. Commissioner of Income-tax v. Savitri Devi Agarwalla, (1970) 77 ITR 934 at p. 941 (assam) (DB).

On proof of the facts that a letter properly containing the particular document is proved to have been but into the post office, it is presumed that the latter sent through the post office reached the addressee. This presumption is not confined to the presumption of that letter being posted merely, but extends to its receipt by the addressee at its destination and at the proper time acording to the regular course of business of the Post Office. Kirloskar Bros. Ltd. Indore v. Engineering Machinery Mart, Narsinghpur, AIR 1982 MP 75 : 1982 Jab LJ 82, Harihar Banerji v. Ram Shashi Roy, AIR 1918 PC 102 Mobarak Ali Ahmed v. State of Bombay, AIR 1957 SC 857.

Service through registered post of summons of the Court of Small Causes Act is permissible. Ramesh Chandra Das v. National Tobacco Co. of India Ltd., Calcutta, AIR 1940 Cal 536 : 44 CWN 999.

The expressions "serve", "give" or "sent" have been held to convey the same meaning. B. Thammiah v. Election Officer, Banavara (1980) 1 Knat LJ 19 at p. 20.

Presumption of service and its rebuttability.— The presumption under this section is not confined to the presumption of that letter being posted merely but extends to its receipt by the addressee at its destination and at the proper time according to the regular course of business of the post office. Kirloskar Bros. Ltd. Imdore v. Engineering Machinery Mart, Narsinghpur, AIR 1982 MP 75 : 1982 Jab LJ 82. Thus, the presumption under section 27 of the General Clauses Act, covers presumptions both of "law and fact", subject to its rebuttability which flows from language of the section, but it can arise only when the notice is sent by registered post, there may arise a presumption under section 114 of the Evidence Act when the notice is sent by ordinary post under section 106 of

the Transfer of Property Act. 1972 All Lj 499 at pp. 500, 501 : 1972 AllWR (HC) 299 (DB); AIR 1964 All 426 at p. 427 : 1068 All WR (HC) 413; AIR 1955 NUC (Bhaopal) 1788, AIR 1954 Bom. 159 , AIR 1922 Bom. 377 (1) ; AIR 1955 NUC (Madh Bharat) 3022 ; AIR 1956 Cal 537 at p. 539 : (1955) 28 ITR 634 (DB). Both the presumptions are rebuttable, and this is so because service by Registered Post is at any time a poor substitute for personal service. Sunder Spinner v. Makan Bhula, AIR 1933 Bom. 377 (1) : 23 Bom. LR 908;AIR 1968 Cal 49. Where the nioices are received back with the endorsement that the party refused them to accept, the Court can presume the valid service of the notice. Jagdish Singh v. Natthu Singh, AIR 1902 SC 1604 at 1606.

When the question is as to counting of an interval between sending a notice of meeting and the actual holding of meeting, the starting point is the date of despatch of notice. Jai Charan Lal v. State of U. P., AIR 1968 SC 5 at p. 7 : 1967 All LJ 936. However, the mere despatch of a notice does not amount to "giving' of notice. Narsimhiah v. Singre Gowds, AIR 1966 SC 330 at p. 332 : (1965) 1 SCJ 552. When a notice is sent by registered post it should be delivered personally to the lessee or to one of his family or servants. As service by post is an alternative mode of service and the notice having been sent as required under Section 27 of the General Clauses Act, it has to be deemed that the service has been duly effected, Mere denial. or mere statement on oath that the notice has not been received will not rebut the presumption contained in section 114 of the Evidence Act and the deeming provisions in Section 27 of the General Clauses Act. M. Janakiram Naidu v. T. A. Arumugha Mudaliar, (1970) 2 MLJ 535 : Kirloskar Bros, Ltd., Indore v. Engineering Machinery Mart, Narsinghpur, AIR 1982 MP 75 at p 79 , 80; 1980 Rajdhani LR 693 : (1980) 2 Ren CJ 543 at p. 458. Such presumption can be rebutted on the strength of other circumstances on record. Modho Lal v. Roop Chand, 1970 Rent 607 at p. 610 (Delhi). The presumption of service stands also rebutted if the addressee, who made a statement on oath about non-delivery, has not been cross-examined. Amar Noth v. Smt, Champa Devi, (1978) 4 AIR L 90 : 1978 All LJ 44.

Notwithstanding the provisions of this section, a letter sent under certificate of posting can also be presumed to have been delivered to the addressee. Dineshwar Prasad Singh v. Monorama Devi, AIμ 447 at p 448.

If the postman could not identify the addressee, the presumption is not rebutted, especially when he was required to identify the addressee after a long time of one and half years and the postman was not familiar with the addressee. Dwarka Singh v. Ratan Singh, 1969 All LJ 489 : 1960 Ren CR 849. Not

only this but also that when service is effected by refusal of postal communication, the addressee is imputed with knowledge of contents thereof. Har Charan Singh v. Shivarani, (1981) 2 SCC 535 ; Aziz Agha Sarwar v. Second Addl. District Judge, Moradabad, (1984) 2 All RC 334.

When the endorsement on the back of the registered notice to the tenant to quit states that the tenant was concealing himself and refusing to receive the notice and personal notice had failed, a copy of the notice affixed on the door of the tenant's house was held to be sufficient compliance with the requirements of law under section 106 of the Transfer of Property Act in view of section 27 of the General Clauses Act and section 114, Illustration (e) of the Evidence. Act. Punum Mal v. Durga Singh, 1967 Kash LJ 383 : AIR 1967 J & K 141.

The presumption of due delivery of any document required to be served by post, if poroperly addressed and sent by registered post that can be raised under section 21 of the General Clauses Act is a rebuttable presumption. Commissioner of Income-tax v. Smt. Lalita Kapur, (1970) 2 IT 495. The presumption is rebutted when, in the absence of anything else, the record contains only the returned postal cover with the endorsement of "left". Ram Rati v. Fakira, AIR 1988 All 75 ; Hare Krishna Das v. M/s. Hanhnemann Punlishing Co., Ltd. 70 CWN 650; Negendra Nath Karmaker v. Jotish Chandra Mukkeriee, AIR 1952 Cal 221.

There is a distinction between the presumption that arises under section 114 of the evidence Act and the presumption under section 27 of the General Clauses Act. The latter is one of fact and discretionary while the former is one of law and obligatory. The presumption under section 27 of the General Clauses Act is rebuttable and the burden of proof is on the addressee of the notice. Dwarks Singh v. Ratan Singh, 1969 All LJ 849 All LJ 849 : 1969 Ren CR 849 ; 1969 AllWR (HC) 477.

Then against, the presumption under section 27 is for satisfaction of court whether it should pass an ex parte decree deeming the service by post as sufficient, but the same does not bind the defendant who was not represented at the exparte hearing of the case. AIR 1954 Bom 159; 55 Bom LR 916.

The presumption raised under this section is a rebuttable presumption. AIR 1932 All 347 : ILR 54 All 548. The onus is on the addressee to prove that the service of notice was not in fact effected on him by stating on oath that the postman never came to him with the notice. Shive Dutt Singh v. Ram Das, AIR 1980 All 280 : (1980) 6 All LR 457;AIR 1989 SC 1433 (1939); 24 IC 437 (Bom).

The bare statement of the tenant on oath denying tender and refusal to accept the delivery from postman is not sufficient to rebut presumption of correctness of endorsement of postman that the delivery was refused. AIR 1990 SC 1215.

It has been held that when the defendant had categorically denied the receipt of any notice and had denied to have signed the acknowledgment, the trial court would be right in shifting the onus on the plaintiff, because the presumption, whether under section 114 of the Evidence Act or under section 27 of the General Clauses Act, can be raised only if it is should that the notice had given correct particulars of the addressee on the notice and on the form of acknowledgment. AIR 1978 J & K 31 (33-34).

If the lessor sends a notice by registered post properly addressed to the lessee, he need not prove service because a presumption attaches to the postman's report 'refused'. Budhav. Bedariya, AIR 1981 Madh Pra 76 at p 79 ; 1980 Jab LJ 285; IIR (1952) 4 Assam 357 : AIR 1958 Cal 251. Where a notice was sent by registered post and the postman endorsed "refusal", the endorsement of refusal was held sufficient to justify presumption of service. 1963 Jab LJ 85. Where the return notice contains an endorsement. "left", made by the postman, the presumption raised by this section stands rebutted. Hari Krishna Das v. M/s. Hahnemann Publishing Co., Ltd., (1966) 70 CWN 262. The Supreme Court held that where in a case the landlord sent notice to tenant to terminate tenancy through registered post on correct address he must be held to have complied with the statutory requirement and notice will be a valid one even if returned unserved. Madan and Co. v. Wazir Jaivir Chand, AIR 1989 SC 630.

When the notice served on the tenant by registered post was returned with the postal peon's endorsement, 'refused by tenant' due service of notice on the tenant can be presumed under section 27 of the General clauses Act read with section 114 of the Evidence Act. Munni Debi v. Pushpalata, 71 Cal WN 782. It is not necessary that name of sender should have been indicated on the envelope. Ramesh Chandra v.M/s. Delhi Cloth & General Mills Co., Ltd, 1974 Ren CJ 217 : ILR (1973) 1 Delhi 283 at p. 390 (DB). But the notice sent under certificate of posting cannot be said to be legal and valid service. Kumbhar Naran Ala v. Mehta Nana Lal Jethabhai, AIR 1988 Guj 5 : (1988) 1 Guj LR 473.

Notice of termination of tenancy sent under certificate of positing is deemed to have been delivered to the addressee. Mere denial of receipt of notice is not sufficient rebuttal of presumption of service. Sending a notice by Registered post is necessary for Section 27 of General Clauses Act but not for section 114 of Evidence Act. Atosh and sons v. Asstt, collector, Central Excise, 1992 (60) ELT 220 (Cal) (229).

The presumption under section 27 arises if the four conditions are fulfilled, namely, sending the letter by registered post, it being properly addressed, pre-paid, and the letter,

containing the document, being posted. Such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. 86 CWN 456.

When a notice under section 3 3(1) (b) of the Motor Vehicles Act. 1939. returned with the endorsement that the addressee was not known and not traceable the presumption of service of notice under section 27 of the General Clauses Act cannot arise because a contrary and different intention appears from section 33 of the Motor Vehicles Act, 1939 which requires that the notice under it has to be sent accompanied by an acknowledgment. Jitendra Barai v. Chairman, Regional Transport Authority, AIR 1971 Orissa 120.

Where plaintiffs had sent a copy of notice to all the three defendants separately by registered post on correct address and only one Defendant turned up to deny his signatures in the acknowledgment due, the rebuttal shall be treated as against the one which was served on that defendant and the presumption of service on other co-tenants of other copies can validly be drawn in favour of the landlord plaintiffs. Kulkakami Patterns v. Vasant Babu Rao Ashtekar, 1992 (2) SCC 46 (49).

Unless the contrary is proved.— A reading of the section indicates that the matter of proof to the contrary, can be limited only to proving that service had not been effected at the time at which the letter would have been delivered in the ordinary course of post. B. Bhaorrmal Tirupati v.Additional Colector, Customs, AIR 1974 mad 224 : (1974) 1 MLJ 319. Therefore, the mere endorsement "left" is never sufficient to prove the contrary. (1966) 70 CWN 262. Endorsement of "left" in the absence of anything else rebuts presumption under section 27.

When notice terminating tenancy has been sent by registered post and the same has been received by the treasurer and secretary of the tenant company who do not produce the register of letters issued and received as maintained by the company, the notice to quit will be held as valid by adverse inference drawn against the tenant. Tide Water Oil Co. (India) Ltd. v.K. D. Banerjee, AIr 1982 Cal 127 : 91982) 1 Cal HN 54.

Since section 27 of the General Clauses Act is apparently divisible into two parts ; the first, dealing with the mode of service; and the second, dealing with the time of service, it may conveniently be said that, on proof of facts that a letter on which (1) stamp has been paid properly (2) which is properly addressed ; (3) which contains the document ; and (4) which was sent by registered post, a twofold presumption arises, under the section, namely, (i) that he service shall be deemed to have been effected ; and (ii) deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

However, it is possible for the addressee to prove that in fact the letter never reached him. Moatadin Sharma v. Upendra Sharms, AIR 1972 Pat 292 at p 293. It is then, open to the court, in each case, on its particular circumstances to be stateside or not satisfied with sufficiency of service on return of an envelope after refusal. Baburam Ramkissen v. Bia Pennabai, 13 Bom. LR 323.

The question is weather the words, unless the contrary is proved govern both the parts of the section.

The High Court of Mysore, in (Mrs.) Achamma Thomas v. Fairman in AIR 1970 Mys 77 ; (1969) 2 Mys LJ 179. has answered that these words must only refer to the conditions contained in the first part of the section. The Court said.

It is only to meet the contingency of a person who is to be served with notice trying to evade it, that the service shall be deemed to have been effected if the four conditions are fulfilled. If the contrary to be proved has reference to the actual service, then provisions of section 27 could be rendered useless by the addressee's avoiding to receive the letter or even refusing the registered letter."

Presumption on postal refusal-Whether postal peon to be examined.— If the notices are sent at the correct address and have reached the destination, the mere fact that the party refused to take them, would not entitle him to contend that they were not duly served. Bhopal Trading Co., Kanpur v. Commissioner of Income-tax U. P., 28 ITR 478 (All) : AIT 1955 NUC 1514. At the same time, endorsement of refusal, when it is not mentioned as to who refused to take delivery, is not sufficient to raise the presumption requisite under this section. Commissioner of Sales Tax v. Mukat Lal 31 STE 532. The service of the notice to quit shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. and the contrary cannot be said to have been proved merely by statement on oath of the person that notice had not been received by him. M. Jankiram Naidu v. T. R. Arumugha Mudaliar, (1970) 2 Mad LJ 535 at p. 538;AIR 1972 All 539;AIR 1974 Mad 224 : 87 Mad LW 178. If the addressee either cannot be met or refuses to taken notice, there appears to be no reason why the notice should not be deemed to have been properly served on the addressee, and even if the addressee rebuts that fact by his statement on oath, the veracity of such statement has to be considered in the light of other evidence, available on record as also the conduct of the party. Jamal Khan v. Haji Yusuf Ali, 1978 All LJ 993 : (1978) 4 All LR 870;AIR 1970 All 446 (FB) . Moreover, the postal endorsement of "refusal" is presumed to mean the refusal by the addressee himself. Mohan Lal Kojrival v. Sunderlal Nan Lal, Sraf, AIR 1949 EP 295 : 51 Punj LR 57. Even

if, therefore, the actual refusal by the addressee is not proved, service of notice may well be held to be proved, because all that happens in the post office from the time of posting of a letter to the point of delivery to the addressee or return to the sender are official acts to which the law entitles the court to presume that official acts have been regularly performed and that the endorsement was made by the peon and made so correctly. No presumption, however, arises on an envelope sent by ordinary post and returned with endorsement of refusal, and particularly, when the postman has not been examined. Surinder Kumar Kapur v. Sujan Singh Chadha, IIR (1971) 1 Del 672 at pp 677, 678; (1979) 81 Punj LR 69,70. But, where from the admission of the defendant or his conduct, the denial of service may be found incorrect, it is not necessary to produce postman for evidence. Achab Ali v. Abdul Mutalib Majarbhuiya, 1983 (2) Gauh LR 325 (330).

The decision of Rankin, C. J., and Peason, J., in Hari Pada Dutta v. Jai Gopal Mukherjee, (1935) 39 Cal WN 934, is an established authority on the point that if a registered letter came back with an endorsement of refusal, that in itself, until explained, was prima face sufficient evidence that the addressee had an opportunity to accept it. There is also a very old decision in Lootf Ali Meah v. Pearee Mohun Ray, (1871) 16 Sug WR 223 laying down the same principle that the addressee could not take advantage of his own refusal provided there was evidence that a letter had been forwarded to the addressee by post duly registered.

The court must be guided in each case by special circumstances of the case. Gopal Raghunath v. Krishna, (1901) 3 Bom. LR 420.

In Roop Chand Rangildas v. Hussain Haji mahomed, 16 Bom LR 204 : AIR 194 Bom. 31. Mr. Justice Beaman after referring to section 27 of the General Clauses Act, had observed that the point is actual delivery, and the defendant may not taken advantage of his own refusal to accept delivery when tendered, that is to say, that if the registered cover is tendered to and refused by him, he refuses at his own risk and where he disputes the actual delivery or tender of delivery, it is a mere question of fact and the onus in on him. Nirmala Bala Devi v. Proval Kumar Basu, (1948) 52 Cal WN 659 at P 664.

If a letter properly directed containing a notice to quit is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register.

Section 27 of the General Clauses Act constructs a "presumption of law" whereas section 114 of the Evidence Act,

only a presumption of fact. Section 27 invests the presumption with a majesty of rule ; section 114 allows a discretion. and is not therefore, conclusive. Udai Narayan v. Radhe Shyam, AIR 1950 Orissa 36 relied on is Ewarka Singh v. Ratan Singh Ahuja, 1969 ALJ 849; AIR 1959 SC 504 1969 AlJ 849. Further, the presumption invoked by section 27 cannot be availed of when service by affixture is required by any provisions of a statute. K. A. Abdul Khader v. Dy, Director of Enforcemnt Information Directorate, AIR 1976 Mad 233.

Presumption under this Act distinguished from that under Evidence Act.— Section 27 of the General clauses Act does not say that wherever there would be any provision in any Act for sending any notice by post, it must be invariably by registered post. This section lays down that if any Act or Regulation requires any document to be sent or served by post and if in that case any document is sent by registered post by properly addressing the person concerned and by pre-paying, then it would be deemed that the document in question has been effectively served unless the contrary is proved. Section 27, therefore, speaks about a presumption of service if any document is sent by registered post duly pre-paid and properly addressed. The mere fact that the letter came back not from the dead letter office but returned as "refused" would not destroy the presumption and would suffice to prove that service has been effected despite the fact that it has not been effected. and in such case. The presumption is however rebuttable. The presumption has been sanctioned only in case of posting. The point to be proved is the posting of such letter. , AIR 1920 Cal 287 (2). (288) : 23 Cal WN 319 (DB), under registration subject to the condition mentioned in addition to the presumption under section 114 of the Evidence Act. Although the presumption under section 27 of the General Clauses Act does not apply to a case of letter sent under certificate of posting, the presumption under section 114 of the Evidence Act would apply in such a case. The Court will, however, be at liberty to see if such presumption has been rebutted in view of the evidence on record and the fact and circumstances. Jitendra Nat v. Bijoy Lal, AIR 1976 Cal 478.

When a prepaid registered letter properly addressed has been handed over to the postal authority, it must be taken that it is duly delivered as letters in the ordinary course are duly delivered. The object of section 27 of the General Clauses Act is to ease the burden on a person who sends a registered letter and fulfills the conditions laid down in that section. The Legislature transfers in such cases the burden to prove non-delivery on the addressee. On the proof that the letter was properly addressed, pr-paid, registered and put into post office, the rest follows without further proof, viz., that the document

has been served upon and received by the addressee. Memon Adambhi Haji Ismail v. Bhaiya Ramdas Badludas. AIR 1975 Guj 54 : 15 Guj LR 137.

On the other hand section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Correct address is the condition precedent of any presumption, and once it is proved by the party that notice is delivered to post office with the correct address of the addressee, the service can be presumed sufficient even if the envelope received back with endorsement "addressee avoided service". Siadi S. Murthy v. K. Swami Naidu, 1992 (1) ALT 555.

Whatever the case, an endorsement that "premises found locked" does not give rise to any presumption. C. M K. Ramu Mudaliar v. Kanthamani Natraja, (1979 1 Mad LJ 346 : (1979) 22 Mad LW 5 at p. 8.

No presumption of affixture.— Service by affixture can be effectual only when it is shown that notice is affixed at the place the person is ordinarily residing or carrying on business as pointed out by some other person that such residence is that of addressee of the notice. C.I.T. v Sabitri Devi Agarwalla (1970) 77 ITR 934. (A & N).

[1]**28. Citation of enactments.**— *(1) In any act of Parliament or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act or regulation, any enactment may be cited by reference to the* [2]*[short title or Bengali translation thereof] conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.*

(2) In this Act and in any act of Parliament or Regulation made after the commencement of this act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

1. Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 35.
2. Subs. by P.O. No. 147 of 1972, Art. 14, for "title or short tile (if any)".

29. Saving for previous enactments, rules and bye-laws.— *The provisions of this Act respecting the construction of acts, Regulations, rules or bye-laws made after the commencement of this act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the act, Regulation, rule or bye-law is continued or amended by an act, Regulation, rule or bye-law made after the commencement of this act.*

[1]***[30. Application of Act to Ordinances.***— *In this act the expression* [2]*[Act of Parliament] wherever it occurs, except in section 5, and the word "Act" in clauses (9),*

(12), (38), (48) and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by [3][any person having authority to legislate under any constitutional provision or by the President of Bangladesh under the Constitution].

[4]* * * * * *

1. Ins. by the Second Repealing and amending Act, 1914 (XVII of 1914), 2 s and Sch. 1.
2. Subs. by P.O. No. 147 of 1972, Art. 7 for "Central Act".
3. Subs. by P.O. No. 147 of 1972, Art. 15, for "the Governor-General under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915 or section 42 of the Government of India act, 1935 or an Ordinance made and promulgated by the President on or after the twenty-third day of March, 1956".
4. Sections 30A and 31 regarding "Application of act to acts made by the Governor-General" and "Construction of references to Local Government of a Province" which were inserted by the Repealing and Amending Act, 1923 (XI of 1923), s. 2 and Sch. 1 and the Repealing and Amending Act, 1920 (XXXI of 1920), s 2 and Sch. I, respectively, were rep. by A.O. 1937.

Scope and applications

Plea of limitation not raised before the commissioner can not be entertained in appeal as a 'substantial question of law'. 14 DLR (1962) 48.

Applicability and scope.— The section applies to temporary Ordinance as well which is promulgated on occasions necessitating immediate action, and, therefore, comes into operation immediately. Adarsh Bhandar v. Sales Tax Officer, Aligrh, AIR 1957 All 475 : 1957 All LJ 654; AIR 1949 Mad 898 AIR 1933 All 669.

The word "Act" or "Ordinance" must refer to the entire piece of legislation described by that word. It does not mean individual enactments..

A Government Order becomes notification when : (i) it has been published in the Gazette ; and (ii) such publication is under proper authority. Bhilcam Chand v. State, AIR 1966 Raj 142.

Natural diligence requires that before a law can become operative, it must be promulgated and published. It must be broadcast in some recognizable way so that all men may know what it is.".

In adarsh Bhandar v. Sales Tax Officer, AIR 1957 All 475. the word "Act" or "Ordinance" was construed to refer to the entire statutory legislation coming under the description of that word rather than to its sections or paragraphs only.

[1]**[31. Application of Act to Orders made by the president.**— *The provisions of this Act shall apply for the interpretation of any Order made by the President or acting President of Bangladesh, and for the interpretation of any Presidential Order made before the 26th day of March, 1971, and in force in Bangladesh, as they apply for the interpretation of an Act of Parliament, as if any such Order were an Act of Parliament.].*

1. Subs. by P.O. No. 147 of 1972, for section 31.

Applicable