

the Tribunal in favour of Smt. Baldevi on the 7th July, 1953, cannot be reopened and cannot be readjusted under the provisions of the present Act. Moreover, if an application under section 11(2) were allowed to be preferred at any time no decree passed by a Tribunal on the application of a creditor would ever be final and there would be no end to litigation.

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For these reasons, I would uphold the order of the Tribunal and dismiss the petition. Having regard to the difficulty of the point at issue I would leave the parties to bear their own costs.

FULL BENCH.

*Before Bhandari, C. J., and Falshaw, and Bishan Narain, JJ.*

UNION OF INDIA, PREVIOUSLY DESCRIBED "DOMINION OF INDIA",—Defendant-Appellant.

*versus*

FIRM BALWANT SINGH-JASWANT SINGH,—Plaintiffs-Respondents.

Regular Second Appeal No. 75 of 1951.

*Indian Independence (Rights, Property and Liabilities) Order, 1947, Act 8(1) (a)—Applicability of—Contract for the purposes of Dominion of Pakistan—Goods consigned by North Western Railway from Karachi to Peshawar—Non-delivery of Goods—Suit for damages—Whether Government of India, liable.*

*Displaced Persons (Institution of Suits) Act (XLVII of 1948)—Section 4—Proprietors of Plaintiff firm registered as refugees at Delhi, but residing and carrying on business at Dehradun—Suit instituted at Delhi—Delhi Court—Jurisdiction to entertain suit.*

*Code of Civil Procedure (Act V of 1908)—Sections 20 and 80—Railways Act (IX of 1890)—Section 77—Notice under section 80, Civil Procedure Code, and Section 77, Railway Act—Service of notice, whether constitutes a part of the cause of action.*

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On 25th February, 1947, a Karachi firm consigned goods by North Western Railway from Karachi to Peshawar. The consignor made himself the consignee and later on the R. R. was purchased by B. S. J. S. of Peshawar. The goods were never delivered. On 26th April, 1948, B. S. J. S. who after partition resided and carried on business at Dehradun instituted the present suit against the dominion of India at Delhi for damages for non-delivery.

*Held*, that the contract in the present case is one which is covered by the provisions of Article 8(1) (a) of the Order and that, therefore, no liability remained with the Government of India in respect of the contract.

*Held further*, that the Court at Delhi had no jurisdiction under the Displaced Persons (Institutions of Suits) Act XLVII of 1948, and the mere fact that the proprietors of the Plaintiff-firm had registered themselves in the first place as refugees at Delhi is of no importance, and in order to institute the suit at Delhi they had also to be either residing or carrying on business at Delhi when the suit was instituted, and clearly, they were both residing and carrying on business at Dehra Dun, and therefore, the Delhi Court had no jurisdiction to entertain the suit.

*Held also*, that the mere service of notice under section 80, Civil Procedure Code, and section 77 of the Railways Act, though no doubt an essential preliminary step for the valid institution of a suit, would not make the notices part of the cause of action for the suit itself.

*(Case referred to Full Bench by the Hon'ble Mr. Chief Justice and Hon'ble Mr. Justice Falshaw, on 18th November, 1954, for decision).*

*Second appeal from the decree of the Court of Shri Harbans Singh II, Additional District Judge, Delhi, dated the 15th day of November, 1950, affirming that of Shri D. R. Pahwa, Commercial Sub-Judge, Delhi, dated the 20th April, 1949, granting a decree for Rs. 2,135-10-0 with proportionate costs against the defendant and further ordering that the amount shall be paid within three months from the 20th April, 1949, The Lower Appellate Court ordered the parties to bear their own costs of his court.*

N. L. SALOOJA and K. C. NAYAR, for Appellant:

H. S. GUJRAL and A. C. HOSHIARPURI, for Respondents.

## ORDER.

BHANDARI, C. J. Two contrary views appear to Bhandari,  
have been expressed in regard to the interpreta- C. J.  
tion of paragraph 8 of the Indian Independence  
(Rights, Property and Liabilities) Order, 1947, one  
by the Calcutta High Court in *Nani Lal Roy v. Sat-  
yendra Nath Roy* (1), and the other in a decision of  
this Court reported as *Chaman Lal Loona and Co. v.  
Dominion of India* (2). In order to resolve the  
conflict which has arisen it would be desirable to  
refer this case to a larger Bench. We would order  
accordingly. This case will be heard at Simla.

## JUDGMENT.

FALSHAW, J. The facts giving rise to this second Falshaw, J.  
appeal which has been referred to a Full Bench are  
as follows. On the 25th of February, 1947, a Karachi  
firm consigned a case of sewing needles by the North  
Western Railway from Karachi to Peshawar City  
under Railway Receipt No. 152065. The consignor  
made himself the consignee but the railway receipt  
was ultimately purchased by the firm Messrs. Bal-  
want Singh-Jaswant Singh, then of Peshawar. The  
case of needles was never delivered and on the 26th  
of April, 1948, Messrs Balwant Singh-Jaswant Singh,  
giving a Dehra Dun, address, instituted the present  
suit against the Dominion of India in a Court at Delhi  
claimed Rs. 2,500 as damages for non-delivery in-  
cluding the actual cost of the needles and also  
estimated profits.

The suit was contested on all possible grounds by  
the defendant who challenged the plaintiff's *locus  
standi* to bring the suit, denied the service of due noti-  
ces under section 77 of the Indian Railways Act,  
and section 80, Civil Procedure Code, and raised  
the plea that the Delhi Court had no jurisdiction  
to entertain the suit. The liability of the Govern-  
ment of India for any damages was also denied.

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(1) A.I.R. 1952 Cal. 1

(2) A.I.R. 1954 Punjab 129

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The trial Court found that proper notices had been served, and also found that the Delhi Court had jurisdiction on account of the fact that the proprietors of the plaintiff-firm had registered themselves as refugees at Delhi and so were entitled to bring the suit in that place under the provisions of Act 47 of 1948. On the merits it was found that the consignment of needles was valued at Rs. 2,135-10-0 and that the plaintiff-firm was the assignee for consideration of the railway receipt. The liability of the Dominion of India for payment of the damages due was upheld under Article 9 of the Indian Independence (Rights, Property and Liabilities) Order of 1947. Only the plaintiff's claim for damages on account of estimated profits was disallowed and the suit was decreed for a sum of Rs. 2,135-10-0.

The appeal of the Government was decided by the Second Additional District Judge, from whose judgment it would appear that only two points were raised, before him, namely, the question of the jurisdiction of the Delhi Court and the liability of the Government of India. On the question of jurisdiction the learned Additional District Judge found that the proprietors of the plaintiff-firm were not residing or carrying on business at Delhi, but at Dehra Dun, and that the mere fact that they had in the first instance registered themselves as refugees at Delhi did not give the Delhi Court jurisdiction under the provisions of Act 47 of 1948. He found, however, that the notice under section 80, Civil Procedure Code, had been served on the defendant at Delhi and held on the strength of a decision of the Calcutta High Court that this formed a part of the cause of action and, therefore, gave the Delhi Court the jurisdiction. He agreed, however, with the trial Court that the Government of India was liable under Article 9 of the Indian Independence (Rights, Property and Liabilities) Order, of 1947, and he accordingly dismissed the appeal.

The case was primarily referred to the Full Bench for a decision on the proper interpretation of the appropriate portions of the Order of 1947. The relevant portions of Articles 8 and 9, read:—

“8. (1) Any contract made on behalf of the Governor-General in Council before the appointed day shall, as from that day,—

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(a) if the contract is for purposes which as from that day are exclusively purposes of Dominion of Pakistan, be deemed to have been made on behalf of the Dominion of Pakistan instead of the Governor-General in Council; and

(b) in any other case, be deemed to have been made on behalf of the Dominion of India instead of the Governor-General in Council;

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent which they would have been rights or liabilities of the Governor-General in Council, be rights or liabilities of the Dominion of Pakistan or the Dominion of India, as the case may be.

\* \* \* \*  
\* \* \* \*  
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(6) The provisions of this Article shall have effect subject to the provisions of Article 9 of this Order; and bank balances and securities shall, notwithstanding that they partake of the nature of contractual rights, be dealt with as property to which Article 7 of this Order, applies.

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9. All liabilities in respect such loans, guarantees and other financial obligations of the Governor-General in Council, of of a Province as are outstanding immediately before the appointed day shall, as from that day,—

(a) in the case of liabilities of the Governor-General in Council, be liabilities of the Dominion of India;

\* \* \* \* \*

The question whether the liability for damages on account of non-delivery of goods entrusted for consignment to a State Railway amounts to one of the "other financial obligations" coupled with loans and guarantees in Article 9 appears to be settled once and for all by the decision of the Supreme Court in the case of *The State of West Bengal v. Seraj-uddin Batley* (1). The facts in that case were that a portion of a certain building in the city of Calcutta had been taken on lease by the Government of United Bengal before the partition for use as a hostel for the students of a medical school, and in May, 1948, the owner of the premises brought a suit in the Calcutta High Court on the original side against the Government of West Bengal for the recovery of the sum due as rent from February, 1947, to January, 1948. The suit was decreed by the learned Single Judge, who held that the case was covered by the provisions of Article 8(2)(a) which reads—

"Any contract made on behalf of the Province of Bengal before the appointed day shall,

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(1) A.I.R. 1954 S.C. 193

as from that day, are exclusively purposes of:—

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- (a) if the contract is for purposes, which, as from that day are exclusively purposes of the Province of West Bengal, be deemed to have been made on behalf of that Province instead of the Province of Bengal;

\* \* \* \*

\* \* \* \*”

This decision was upheld by Harries, C. J., and Banerjee, J., in Letters Patent Appeal, The West Bengal Government appealed to the Supreme Court, before which it was conceded that in the absence of anything else the case would be wholly covered by Article 8(2)(a), but it was contended that by virtue of Article 8(6), that Article was to have effect subject to the provisions of Article 9. The point was dealt with as follows by S. R. Das, J., who delivered the judgment of the Court:—

“The argument before us has been confined only to the interpretation of Article 9. The learned Advocate-General contends that the liability to pay rent under the lease comes within the expression ‘other financial obligations’ to be found in that Article. According to him all obligations to pay money under a contract whether by reason of covenant to pay money or by way of damages for breach of contract may be properly described as ‘financial obligations’. It is no doubt true an obligation to pay money under a contract or for breach

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therefor, is in a sense a 'financial obligation' but the question is not what may popularly be described as 'financial obligation' but what is the meaning of the expression 'other financial obligations' in the context in which it has been used. To accept the argument of the learned Advocate-General will be to rob Article 8 of practically the whole of its content excepting claims for injunction or specific performance of the contract or the like. Such, we apprehend, could not have been the intention of the framers of that Article. This difficulty does not arise if the expression be construed it *ejusdem generis*, for so construed it implies an obligation in the nature of an obligation in respect of loans and guarantees incurred or undertaken by the State as held by Harries, C.J., in *Province of West Bengal v. Midnapur Zamindary Co., Ltd.* (1), which has been followed by Chunder, J., in *Iswar Madan Gopal Jiu v. Province of West Bengal* (2), and by Kapur, J., in *The State of Punjab v. Mohan Lall* (3).

The phrase 'loans, guarantees and other financial obligations' occurred in section 178 in Part VII of the Government of India Act, 1935, and there cannot be any doubt that those expressions used in that section did not refer to all and sundry pecuniary obligations of the State arising out of contracts of every description. The loans and guarantees there referred to mean, it would seem, the special kinds of contracts relating

(1) A.I.R. 1950 Cal. 159  
(2) A.I.R. 1950 Cal. 463  
(3) A.I.R. 1951 Punjab 382

to State loans and State guarantees. In that context 'financial obligations' would mean obligations arising out of arrangement or agreements relating to State finance such as distribution of revenue, the obligation to grant financial assistance by the Union to any State or the obligation of a State to make contributions and the like. It is, however, not necessary or desirable to attempt an exhaustive definition of the expression 'financial obligations'. The Court will have to consider in each case whether a particular obligation which may be the subject-matter of discussion falls within the expression 'financial obligations' within the meaning of Article 9. Whatever liabilities may or may not come within that expression we are clearly of opinion, in agreement with the High Court, that the liability to pay rent under a lease certainly does not come within that expression."

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It will be seen that although in the last portion of this passage the matter has to some extent been left open for future consideration as and when the point arises, I do not think there can be any doubt that a claim of the present kind for damages for non-delivery of goods entrusted to a Railway is even more remotely removed from the scope of 'other financial obligations' in the light of these remarks than a claim for rent directly payable under a contract.

The question, therefore, arises whether the present claim can be brought within the scope of Article 8(1)(b), rather than Article 8(1)(a), within which it would appear to fall. There is undoubtedly one

Union of India, previously described " Dominion of India " v. Firm Balwant Singh-Jaswant Singh Falshaw, J. decision in a similar case which supports the plaintiff's case on this point. This is the decision of Roxburgh, J., in *Union of India v. Loke Nath Saha* (1). That related to a case of an action for damages for short delivery of goods despatched in March, 1947, by the Bengal Assam Railway, both the stations concerned now being situated in Pakistan. The matter was dealt with by Roxburgh, J., as follows:—

“The question is whether under the Order the Dominion of Pakistan or the Dominion of India is to be held liable for the alleged short delivery if it is found that the plaintiff has a legal claim on whichever is in law responsible. The Dominion of Pakistan will be liable under the provisions of Article 8(1)(a) if as from the appointed day the contract is for purposes which as from that day are exclusively the purposes of the Dominion of Pakistan. But I am quite unable to see how it can be said that the contract for carriage of goods in March, 1947, before the Dominion of Pakistan, was ever thought of can be held as from the ‘appointed day’ to be one that is for purposes which from that day are exclusively the purposes of the Dominion of Pakistan.

A similar question was considered in the case of the *Province of West Bengal v. The Midnapur Zamindary Co.* (2), in reference to the interpretation of Article 8(2) of the Order. In that case the contract in question was a lease of a certain house which was used as a hospital, the lease continuing in effect after the ‘appointed day’ and the finding being that the hospital after

(1) A.I.R. 1952 Cal. 140

(2) 54 C.W.N. 677

that day was entirely for purposes of West Union of India, Bengal. The facts, therefore, are entirely previously described different from those in the present case. "Dominion of India" In that case it was held that under Article 8(2)(a) the contract was one which made the Province of West Bengal liable.

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In deciding the matter one has to be guided practically entirely by the exact words used. Reference to the other provisions of the Order are not very helpful, though some reference was made in course of the argument. The division of rights and liabilities made by the Order is provided for according to different categories in Articles 8, 9, 10 and 11 a different system being followed for each category according to its particular nature. It is not possible, in my opinion, to discover any basic principle behind the particular system adopted in each case from which it might be argued that the exact wording, for example, of Article 8(1)(a), might not be taken to be precisely what it appears to be on a plain reading. On a plain reading of the Article, as I have said, it seems to me clear that Article 8(1)(a), does not cover the particular contract in question in this suit. Therefore, the liability on the contract must be as provided in the residual provision 8(1)(b), namely, the liability of the Dominion of India."

If one considers Article 8(1)(a) simply by taking its words in a loose and popular sense, it is certainly difficult to say that a contract relating to the carriage of goods sent by one private person to another, although the Railway on which the goods were sent

Union of India, is entirely situated in what is now Pakistan, is a contract exclusively for purposes of the Dominion of previously de- scribed "Dominion of India" of Pakistan, and this, it would appear, is exactly the error into which the learned Judge has fallen in the above, case. As, however, pointed out by S. R. Das, Firm Balwant Singh-Jaswant Singh v. Falshaw, J., in the Supreme Court decision cited above, what is necessary in deciding these matters is not to consider what the words might be thought to mean by any layman but to consider their legal meaning in the context in which they are employed. It may be pointed out at once that in a subsequent decision a Division Bench of the Calcutta High Court in *Krishna Ranjan Basu v. Union of India representing Eastern Railway* (1), Das Gupta and Debrata Mookerjee, JJ., have overruled the decision of Roxburgh, J. The case was again one relating to goods consigned on the Bengal and Assam Railway in November, 1946 from and to places now in Pakistan, the suit being for damages for non-delivery. The learned Judges have expressly dissented from the decision in *Union of India v. Loke Nath Saha*, (2), and they held that in case of goods booked with a Railway the purpose of the contract as used in paragraph 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, was the carriage of goods and where the destination was some point in Pakistan, the purpose was the purpose of Pakistan. Incidentally the learned Judges rejected the contention that the purpose of the contract was the earning of profit. Another case which has been cited is *Chaman Lal Loona and Co. v. Dominion of India* (3), The appellant in that case was a contractor who had entered into a contract in 1945 for the supply of fodder to the Military Dairy Farm at Lahore. The contract contained an arbitration clause which the contractor

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(1) 59 C.W.N. 99  
 (2) A.I.R. 1952 Cal. 140  
 (3) A.I.R. 1954 Punjab 129

sought to enforce against the Dominion of India, Union of India, in a Court at Ferozepore after the partition. It previously described was held by Khosla and Harnam Singh, JJ., that "Dominion of this contract was wholly for purposes of the India" Dominion of Pakistan within the meaning of Article 8 (1) (a) and that no liability under it rested v. Firm Balwant Singh-Jaswant Singh with the Dominion of India. On the facts of that case this decision appears to be inevitable, but one passage in the judgment of Khosla, J., is of some interest in the present case. This passage reads—

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"An argument urged at the Bar was that Article 8 (1) applies to executory contracts and not executed contracts. This contention, however, is without any force as even a cursory examination of the phraseology of Article 8 will show that if any liability under a contract remains undischarged the question of allocating this liability arises and it necessarily follows that the contract is alive and enforceable. If a contract is completely executed no dispute under it can arise. For determining which of the two Dominions must undertake the liability under the contract must be deemed to have been made on 15th August, 1947. The purpose of the contract must then be determined, and if that purpose is the purpose of Pakistan, then the liability will be that of the Dominion of Pakistan, otherwise the liability will be of the Dominion of India."

If this test is applied to the present case, there can be no doubt that the contract would be one wholly for the purposes of the Dominion of Pakistan.