

This clause guarantees the right of private property, viz., that a man is free to acquire any property by any lawful means and to hold it as his own and to dispose of it at his will, subject, however, to reasonable restrictions. The question, therefore, is whether in the circumstances of the present case the petitioner held or acquired any property by any lawful means. As stated above, if the petitioner could be deemed to be still in service he could be said to have acquired the property by lawful means. But as the petitioner has already been dismissed, it cannot be said that in the present case the provisions of Article 19(1)(f) of the Constitution have been infringed. It is true that the case of the petitioner is rather hard but the courts cannot act upon sentiments in preference to the statutory provisions relating to a case.

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For the reasons given above, we see no force in this revision and dismiss it. Taking, however, into consideration all the facts and circumstances of the case, the parties are left to bear their own costs.

TEK CHAND, J.—I agree.

Tek Chand, J.

K. S. K.

FULL BENCH

SUKHJIT STARCH AND CHEMICALS LTD.,—Appellant

versus

THE UNION OF INDIA AND ANOTHER,—Respondents.

Regular First Appeal No. 153 of 1953

*Indian Independence (Rights, Property and Liabilities) Order, 1947—Articles 8 and 10—Contract Act (IX of 1872)—Sections 43 and 70—Government of United Punjab allotting maize, receiving price and issuing permit for despatch—Maize lying in Lyallpur and Hoshiarpur Districts—*

*Plaintiff receiving whole of maize lying in Lyallpur District and part of maize in Hoshiarpur District before partition—After partition East Punjab Government revalidating and extending permit and ultimately cancelling allocation of maize lying in Hoshiarpur District—Amount paid on account of price remaining in West Punjab—Liability to refund the amount for which maize not supplied—Whether of the East Punjab Government or of the West Punjab Government—Transaction—Whether amounts to contract of sale—Contract—Kinds of—Liability to pay the amount on the doctrine of quantum meruit—Whether enforceable.*

1960

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Held, (per Dulat, J.),—

- (1) That the Director of Food Purchases, Punjab, was concerned with the performance of his statutory duties concerning the distribution and disposal of maize and the transaction between him and the plaintiff was not a business transaction in the ordinary sense. It is wrong to think even that the Director had full power of disposal over the maize in question in the manner an ordinary owner of goods has such power. The Director was, on the other hand, bound by what the Essential Supplies (Temporary Powers) Act demanded, so that, although the Director had the power of allocating certain quantities of maize in a certain manner, he was always free to alter the same allocation and, in fact, bound to do so if changed circumstances required such allocation to be altered. The transaction, therefore, as between the Director and the plaintiff has no resemblance to an ordinary transaction of sale by the owner of goods to another. The maize in dispute absolutely belonged to certain stockholders, called in this case the Nagrota Syndicate, and, although in exercise of his statutory powers the Director could, as he did, direct that syndicate to dispose of the maize in a certain manner, he was equally competent to reverse his decision, and it is not possible to say that he was selling maize when he agreed to make an allocation in the plaintiff's favour, or that he was refusing to sell

maize when he changed that decision. There was thus, no contract of sale concerning maize in this case and no question can, in the circumstances, arise of the breach of any contract, and Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, has no application.

- (2) That on the facts of this case the cancellation of the allocation of maize from Hoshiarpur District and refusal to refund the price received therefor in advance amount to actionable wrong for which cause of action partly arose in East Punjab and partly in West Punjab. It follows that the East Punjab became liable jointly with the West Punjab to return the money in question to the plaintiff. Under section 43 of the Indian Contract Act, 1872, the plaintiff can compel either of them to refund the money. It was not necessary for the plaintiff to join the West Punjab Province in the suit and the suit cannot be said to be incompetent on that ground.

Held, (per Shamsher Bahadur, J.)—

- (1) That the defendants had allotted the maize under the regulatory provisions of the Essential Supplies (Temporary Powers) Act, 1946, and they had never accepted the position of "sellers" of the commodity. Though the consideration had moved at the instance of the defendants, the transaction did not constitute a sale in which the Government were the sellers. The Government was merely acting as a *via media* and was neither a contracting party nor a beneficiary of the contract.
- (2) That the contract has to be looked as a whole and not only the unexecuted portion of it whose compliance is sought by the plaintiff. The contract, if any, did not fall within sub-clause (a) of clause (3) of Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, and, therefore, the liability, if any, would be of West Punjab under sub-clause (b).

- (3) That if it is an obligation which amounts to an actionable wrong other than the breach of contract under clause 10 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, it has to be seen where the cause of action arose. On the facts of this case it cannot be said that the cause of action arose wholly in the territories of East Punjab; at best, it can be said that the cause of action arose exclusively neither in the territories of West Punjab nor of East Punjab and it, therefore, became joint liability of the Provinces of East and West Punjab. The Punjab Government who is sought to be made liable has not unjustly enriched itself in any manner as the amount paid by the plaintiff has been left in West Punjab and that Government has not permitted its transmission to East Punjab.

*Held* (per Tek Chand, J.),—

- (1) That there was a contract between the plaintiff company and the Government. The plaintiff company, on its side, had fully performed its part of the contract by paying the entire price in advance as required. The Punjab State committed breach of the contract by illegally preventing the plaintiff-company from receiving the remaining quantity of the maize lying at Hoshiarpur, under its effective control, and subject to its absolute disposal. There was privity as between the plaintiff and the Government, but none as between the plaintiff and the stockists or the clearing agents. The price had been paid at the bidding and in accordance with the directions of the officers of the Government; and where, and how the amount, representing the price, was deposited or transferred, was a matter exclusively within the control of the Government. After the price had been paid, the plaintiff-company who never deposited the amount with the United Commercial Bank, could not control its disposal. The plaintiff-company could not ask the bank to refund the amount. Thus there was no connection or any

legal bond as between the plaintiff and the bank. The relationship was as between the plaintiff and the Government who were the privies to this particular transaction which has all the features of a valid and legally enforceable contract. If, having regard to the exigencies of the situation in the country, or, in view of any national emergency, the Government stepped in and assumed power to control production, supply and distribution, etc., of essential commodities and got statutory powers, in order to act as an intermediary between the supplier and consumers of controlled articles in the matter of making allocations, determining prices and providing special procedure for realising the prices and supplying the goods, it also thereby owed an obligation to the consumers and suppliers to compensate them for damages resultant upon the acts of the Government and thereby it also took upon itself liabilities, arising in consequence of the responsibilities undertaken.

- (2) That alternatively the Punjab Government is bound to make compensation to the plaintiff company to the extent to which it was enriched, under section 70 of the Indian Contract Act. The expression "does anything" occurring in section 70 includes payment of money and an action lies in a case where the payment was made for a consideration, which failed, the reason being that *ex aequo et bono*, the defendant ought to refund the money received. The principle of section 70 applies to cases, even where there is no question of privity of contract, as in such cases, the Court has only to see whether the plaintiff is entitled to restoration of money, for reasons resting on natural justice, and on the ground of defendants' unjust enrichment. The plaintiff having paid the money at the request of the defendant, the former is entitled to be compensated to the extent of the failure of consideration. In such a case, a liability, even if it is not strictly contractual will, nevertheless, be implied by law, the obligation being *quasi* contractual. Section 70 imposes a liability, even in

the absence of mutual assent. It embodies the doctrine of *quantum meruit*, but in its scope, section 70 has a wider ambit than its counterpart in the English Law, and it goes far beyond it.

- (3) That the liability under section 70 of the Contract Act is *ex contractu*. It is not material that at the time the contract to supply maize was made, the Government did not stand to benefit by it. The law in order to impose a contractual obligation does not look to the benefit of the promisor as a sufficient consideration if in consequence of the promise there is detriment to the promisee. If the promisee, and in this case the plaintiff-company, parts with something of value at the request of the promisor, that is the Government, it is immaterial whether the promisor receives anything. The consideration given by the promisee for a promise need not move to the promisor, but may move to anyone requested by him. The commonest illustration of consideration moving to a person other than the promisor is a contract for a guaranty.
- (4) That the purpose of the contract as on 15th August, 1947 was to supply maize at Hoshiarpur and, therefore, it was the exclusive purpose of the Province of East Punjab. A contract made in respect of property, within the plenary control of the Government of East Punjab could never be deemed to be for the exclusive purposes of the Province of West Punjab. The answer to the question as to exclusive purposes of the one State, or the other, must depend upon the place where the particular property, the subject-matter of the contract, was lying on and after the appointed day. The East Punjab Government was, therefore, liable for the amount in suit.
- (5) That the test of indivisibility or severability of a contract would depend on whether the quantities to be supplied from different places were so interdependent, that the parties would not have

accepted the supply from one place to the exclusion of the other. Another test is, whether the contract could be completed in part only and the recovery had, therefor. The nature of this transaction shows that the contract was severable, and the consideration was apportionable, and this is, how it had been construed by the parties.

*Case referred by Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice Shamsher Bahadur, on 27th May, 1960, to a third Judge on account of conflicting conclusions reached by them and later on decided by Hon'ble Mr. Justice Dulat on 15th November, 1960.*

*Regular First Appeal from the decree of Shri Mohinder Singh, Senior Sub-Judge, Hoshiarpur, dated 3rd June, 1953, dismissing the suit with costs.*

B. R. TULI AND S. S. SODHI, ADVOCATES, for the Appellants.

S. M. SIKRI, ADVOCATE-GENERAL, K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL AND MELA RAM SHARMA, ADVOCATE, for the Respondents.

#### JUDGMENT

SHAMSHER BAHADUR, J.—The short, though difficult, question for determination in this appeal is whether the Union of India and the State of Punjab are jointly or severally liable to make payments of both or either of the sums of Rs. 60,172-15-9 and Rs. 50,000 by way of refund and damages, respectively, to the plaintiff, Sukhjit Starch and Chemicals Limited, for the undelivered quantity of maize allotted to it by the Government of undivided Punjab before the partition of 1947. The trial Judge having dismissed the suit for recovery of these sums, the plaintiff company has preferred an appeal to this Court.

Shamsher  
Bahadur, J.

Like other commodities, maize came under the control of the Government of India in pursuance of

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the Essential Supplies (Temporary Powers) Act, 1946. It could be allocated for production of starch by the Textile Commissioner under orders passed under the authority of this Act. It so happened that some maize imported from Argentine became unfit for human consumption, but being still useful in the manufacture of starch, the Government of India decided to make allotments of it to the manufacturers of starch in the country. A letter was sent to the plaintiff company at Phagwara (then in Kapurthala State) on 28th of April, 1947, by the Textile Commissioner by way of intimation that a quantity of 700 tons of Argentine maize could be allotted to it and should the plaintiff decide to purchase this maize, a telegraphic communication was to be sent to the Textile Commissioner who would then arrange for its "procurement" in consultation with the Director-General of Food, Punjab Government, Lahore. It was indicated in this letter that the approximate price of the maize would be between Rs. 7 to Rs. 8 per maund F.O.R. station of despatch. On 1st of May, 1947, the plaintiff company agreed to the allotment of the entire quantity of 700 tons. The price was to be "negotiated" by the Textile Commissioner who was to get the maize "released" for manufacture of starch. On 3rd of June, 1947, the Textile Commissioner informed the plaintiff company that 640 tons of maize for the manufacture of starch at the rate of Rs. 8 per maund F.O.R. station of despatch had been allotted to it. The plaintiff in its letter of the 7th of June, 1947 (Exhibit P. 2) accepted the allotment and informed the Textile Commissioner that it would "arrange for the purchase of the maize from the Punjab Government". Before the 13th of June, 1947, four telegraphic remittances by bank drafts aggregating in all to Rs. 1,45,000, were sent by the plaintiff



company to the Director of Food Purchases, as desired by that authority. The Controller of Food Accounts, in his letter of 16th of June, 1947 (Exhibit P. 11) enclosed the bank drafts to the Manager, United Commercial Bank Limited, Lahore, and it was intimated that "this amount is intended for the supply of 640 tons of maize to the Sukhjit Starch and Chemicals, Ltd., Phagwara, and may be kept in deposit with the bank as a sundry account for making payments to the Punjab Government clearing agents in accordance with the procedure laid down in the memorandum regarding financial and inspection arrangements between the Punjab and deficit units." A copy of this letter was forwarded to the Superintendent, Food Supplies Branch for information with the remarks that financial arrangements with the plaintiff company being complete in respect of 640 tons of Argentine maize necessary permits may issue. A copy of the letter was forwarded, *inter alia*, to Messrs Arrooramal-Durgadass, who were the clearing agents, to make supplies of Argentine maize to the plaintiff company. The endorsement to these clearing agents, including Messrs Arrooramal-Durgadass, was to the effect that "bills evidencing despatch of Argentine maize to Sukhjit Starch and Chemicals, Ltd., Phagwara, should be presented at the United Commercial Bank, Ltd., Lahore and payment received".

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A permit valid for one month was then issued to the plaintiff company on 25th of June, 1947, for the allotted maize, which was to be collected from Lyallpur and Hoshiarpur centres. Maize weighing 8,073 maunds 25 seers and 14 chhatanks, allotted to the plaintiff company from Lyallpur District was delivered to it before the partition but it appears that out of 8,688 maunds of maize

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allotted to the plaintiff from Hoshiarpur District only 2,400 maunds could be removed. The permit for maize lying in Hoshiarpur District was re-validated for the last time on 14th of November, 1947 (Exhibit C.W. 1/A) and extension was granted up to 30th of November, 1947. Ultimately, the plaintiff was informed on 3rd of January, 1948 (Exhibit C.W. 3/A) by the Assistant Director, Food Permit, that the Government of East Punjab had decided to treat the previous allocations made to the starch factories in respect of undespached stocks of Argentine maize as cancelled. In this letter, it was stated that it would now be "for the Syndicates and the Starch Factories to settle between themselves the purchases on the spot in respect of them". It was also mentioned that in view of the "above position" orders would be issued for refund of the balance deposited by the starch factories.

It is common ground that a sum of Rs. 79,845 was in credit of the plaintiff company's account in the United Commercial Bank at the time of partition, this being the sum which still remained to be disbursed to the clearing agents for the supply of undelivered quantity of maize. A letter was sent on 8th of August, 1947 (Exhibit D. 4) by the Director-General of Food to the United Commercial Bank, Lahore, to have this sum of Rs. 79,845-7-9 along with other similar deposits transferred to East Punjab. It appears that the Bank was not able to make the necessary transfer as the Government of West Punjab did not agree to it. The clearing agents declined to make supplies to the plaintiff company after partition and on 3rd of January, 1948 (Exhibit C.W. 3/A) cancelled the permit which had been issued on 25th of June, 1947.

The plaintiff company has brought the present suit for the recovery of Rs. 60,172-15-9 as the price

of undelivered maize and Rs. 50,000 as damages both against the Union of India and the Government of Punjab. The two defendants have denied their liability and it has been pleaded that there was no privity of contract between either of them and the plaintiff. Although eleven issues were framed by the trial Judge, only four of these are now relevant for purposes of this appeal, these being issues Nos. 2, 5, 6, and 7, reproduced below :—

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- “(2) Did the defendants enter into a contract for the sale of 640 tons of maize to the plaintiff company at the rate of Rs. 8 per maund, through properly authorized officers ?
- (5) Is a sum of Rs. 60,172-15-9 due back to the plaintiff as price of maize undelivered to the plaintiff ?
- (6) Have the defendants committed a breach of the contract ?
- (7) Is the plaintiff entitled to claim the sum due to it and the damages for the breach of contract in light of the provisions of the Indian Independence (Rights, Property and Liabilities) Order of 1947 ?”

The trial Court has dismissed the suit and the answer to all the controversial issues in this appeal turns on the existence of a valid, binding and enforceable contract between the plaintiff and the Government of undivided Punjab. There is the ancillary problem whether the liability under the Indian Independence (Rights, Property and Liabilities) Order of 1947, devolves on the Government of India, the Government of West Punjab

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In a very earnest and forceful argument, it has been contended by Mr. Bal Raj Tuli, the learned counsel for the appellant company, that the Union of India, through its Textile Commissioner, and the Punjab Government, through the Director of Food Purchases, at all relevant times were the contracting parties; the offer embodied in the letter of 28th of April, 1947, (Exhibit A-I) emanated from the Textile Commissioner; the final allotment of 640 tons of maize at the rate of Rs. 8 per maund F.O.R. station of despatch was made on 3rd of June, 1947, by the Government of India, through the Textile Commissioner; and the Director of Food Purchases, Punjab Government, asked the plaintiff to make the remittance of Rs. 1,45,000 *in his favour* for the allotment of maize. It is emphasised by Mr. Tuli that the sum of Rs. 1,45,000 remitted by four bank drafts was actually received by the Government of Punjab though it was credited in the account of the clearing agents with the United Commercial Bank and it did not matter if a special direction was given to the Bank that the money was to be kept in sundry account for making payments to the Punjab Government clearing agents. Till the 16th of June, 1947, it was never disclosed by the defendants that the goods were to be supplied by any one but the Government. For all practical purposes the effective offer for the supply of maize was of the two defendant-Governments and the consideration of Rs. 1,45,000 was received by the Government of undivided Punjab from the plaintiff. If the supplies were made by the Syndicate or the clearing agents, it was purely an internal arrangement which did not affect the legal consequences of the liability which had been undertaken by the Government. In this background, Mr. Tuli invites this Court to hold that

the permit issued on the 25th of June, 1947, merely marked the culmination of the sale of 640 tons of maize by the Government to the plaintiff.

Mr. Sikri, on behalf of the respondents, on the other hand, has argued that the Government acted only in exercise of statutory powers of regulation under the Essential Supplies (Temporary Powers) Act, 1946. The stocks of maize were no doubt under the exclusive disposing power of the Government but this does not provide any evidence of its ownership in the commodity. Owing to short supplies, the Government in exercise of its sovereign power had taken over by legislation the control and distribution of commodities, including maize, and it has been pressed upon us by Mr. Sikri that all through the correspondence the words "allotment" and "procurement" have been used in contradistinction to "sale". In the letter of 28th of April, 1947, the plaintiff was informed that it could be "allotted" 700 tons of maize for the manufacture of starch. The plaintiff in its letter of the 1st of May, 1947, had made mention of the price which was to be "negotiated" by the Government in respect of 700 tons of Argentine maize which was to be "released" for manufacture of starch. On 3rd of June, 1947, the Textile Commissioner informed the plaintiff that it had been "allotted" 640 tons of maize and supplies could be obtained through the Punjab Government. The letter (Exhibit P. 11) of 16th of June, 1947, made it clear that the sum of Rs. 1,45,000 had been deposited in the account of the "Punjab Government's clearing agents in accordance with the procedure laid down in the memorandum regarding financial and inspection arrangements between the Punjab and deficit units". The procedure contained in the memorandum is an integral part of the agreement.

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Mr. Sikri has submitted that if the payments had to be received by the Punjab Government as a seller the cumbersome procedure of having this sum deposited in a special account of the clearing agents was manifestly unnecessary. This account had been opened specially for the benefit of the plaintiff and the clearing agents who had to make the supplies of maize. The endorsement made to the clearing agents made it perfectly plain that payments were to be received by them against bills evidencing despatch of Argentine maize to the plaintiff company presented to the United Commercial Bank. In the discharge of its statutory obligations to bring about an equitable distribution of maize, the procedure adopted by the Government was to facilitate at once speedy deliveries to the plaintiff and prompt payments to the clearing agents by the Bank. It is further submitted that if the Government was a contracting party for the supply of maize, the sum of Rs. 1,45,000 would have been credited to the public account of the State under clause (2) of Article 266 of the Constitution of India. Again, if Government was a contracting party no money could have been paid out of this public account in the manner in which payments were made to the clearing agents against delivery of maize to the plaintiff company. It is contended that there is a definite mention in the letter of 16th of June, 1947, about the arrangements which were in operation in accordance with the procedure which had been laid down in the memorandum. In short, the language employed in the documents on which both sides have placed reliance does not speak of a sale transaction and references are made constantly to such words as "allotment", "procurement" and "release". The money remitted by the plaintiff to the Government was in the nature of

trust money and was appropriated for a specific purpose.

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In determining the nature of the transaction in dispute both the conduct and intention of the parties are the most relevant considerations and I would proceed to examine them analytically. Raja Ram P.W. 1, who is the Managing Agent of the plaintiff company, deposed in his evidence that the obstruction to the removal of stocks from Hoshiarpur was offered by the clearing agents. Nowhere has it been stated on behalf of the plaintiff that the maize belonged to, or, was delivered by, the State Government or its representatives either at Lyallpur in undivided Punjab or at Hoshiarpur in East Punjab. The Government appears to have been concerned only with the allocation of maize and the issue of permit which, in the first instance, was valid only for one month and was revalidated for extended periods. The letter, Exhibit P. 11, of 16th of June, 1947, was sent to the plaintiff company and the endorsement made thereon left the matter in no doubt that payments were to be made by the Sukhjit Starch and Chemicals, Ltd., Phagwara (plaintiff) and bills evidencing despatch of Argentine maize were to be presented to the Bank for payment. Nothing has been said in evidence of the plaintiff company to suggest that it was for the Government to honour the obligation of delivery. Indeed, it appears to be indisputable that deliveries were taken through the machinery of the clearing agents or the Syndicate. In their letter of the 26th of November, 1947. (Exhibit P. 10), addressed to the Director-General, Food and Civil Supplies, Punjab, the plaintiff intimated that the supplies under the permit of 25th of June, 1947, had not

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been honoured by the Distributing Syndicate, Nagrota, on the following grounds :—

- (a) The clearing agents, Messrs. Arooramal-Durgadass, had not paid the Syndicate the price of about 2,588 maunds taken over by the plaintiff from them in the month of July, 1947.
- (b) Nagrota Syndicate had been allowed to sell their stock of maize without referring to the permits which had been granted by the East Punjab Government.
- (c) The absence of any Inspector for loading purposes.
- (d) The willingness of the Nagrota Syndicate to part with the existing stock of maize only at price between Rs. 12 to Rs. 12-4-0, per maund.

In this letter, the Government was asked by the plaintiff to compel the Nagrota Syndicate or the clearing agents, Messrs. Arooramal-Durgadass, to make the deliveries of the balance maize to the plaintiff company which had paid the full price for it. None of the reasons adduced in this letter would be relevant, if the seller in fact was the Government.

The cancellation of the permit on 3rd of January, 1948, by the East Punjab Government made it manifest that the Government was dealing with the undelivered stocks of maize not on their own but as a regulating authority for its distribution. The plaintiff in its letter (Exhibit D. 3) of 26th of November 1947, (printed at page 129 of the paper book) requested the Controller of Food



Accounts to issue instructions to the United Commercial Bank, Lahore, to refund the amount due to the plaintiff out of the deposit of Rs. 1,45,000. It was mentioned that this deposit was made under the instructions of the Punjab Government but the letter seems to take note of the actual relationship which existed between the parties.

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Raja Ram has stated in his evidence (page 52 of the paper book) that the *modus operandi* of the transaction was that the clearing agents were to get money from the Government and pay it to the Syndicate. The Syndicate were the Suppliers and clearing agents guaranteed the payment for deliveries made. The payment was to be made from the special appropriated account in the United Commercial Bank. Raja Ram stated that he could not say whether the Syndicate refused deliveries "only on the ground of non-payment". In Exhibit P. 3, which is the annual report of the plaintiff company for the year 1947, it was mentioned that "the balance maize was never delivered by the Punjab Government clearing agents owing to failure of rail and road transport". It is impossible to evade the conclusion that the plaintiff company was fully aware that the clearing agents were responsible for the deliveries and when it found that the United Commercial Bank was not making the remittance of the balance due in its account, it approached the Punjab Government for assistance.

The special account created for the purpose of financing the transaction points to the same conclusion. The payments out of this account were to be made to the suppliers against deliveries. The balance on the eve of partition was Rs. 79,845-7-9 as mentioned at serial No. 24 (page 143 of the paper book), in the statement showing the refunds

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due to the recipients in India, as an Appendix to Item 2 of the Agenda of the Implementation Committee. It appears from this statement that the two Governments had accepted that the plaintiff company was due a sum of Rs. 60,172-15-9. This was not an isolated transaction and there are many such accounts as is clear from the letter (Exhibit D. 4) of 8th of August, 1947, which was sent by the Director-General of Food, Punjab, to the United Commercial Bank, Lahore, to transfer this and other similar deposits in the Imperial Bank of India, Amritsar. It is also significant that the claim in respect of this amount was actually lodged by the plaintiff company with the Pakistan Government which, however, refused to accord permission to the Bank to transfer this amount. The ultimate refusal of the Bank is contained in the letter (Exhibit D. 1) of 23rd of May, 1949, and the reason assigned is that the amounts cannot be transferred without the concurrence of the West Punjab Government.

The detailed procedure, to which a reference has been made in the letter of 16th of June, 1947 (Exhibit P. 11), throws a good deal of light on the question in issue. In paragraph 2 of this document, which though not printed in the paper book forms a part of the Court record (page 121 Exhibit A), it is mentioned that the "actual seller" will receive the price relevant to the consignment which he is to despatch. In paragraph 3 it is mentioned that the Government of India had laid down that "finance will be from recipient to Government" the recipient being the plaintiff company. The plaintiff company which had been allotted a quota was to set up "financial arrangements" with the Punjab Government in the form of a telegraphic remittance or bank drafts in favour of the Director of Food Purchases for the

amount intimated to them by the Controller of Food Accounts, Punjab, Lahore. Messrs Arooramal-Durgadass, are mentioned the clearing agents in this document and they were to charge eight pies commission "for clearing this finance". Paragraph 4 of the document contains procedure for inspection of stocks to which a reference is found in Exhibit P. 10. In paragraph 5, it was mentioned that after the completion of the financial arrangements permits were to be issued by the Director of Food and thereafter the "seller" was to make arrangements for the despatch of maize and in doing so "will get consignments inspected for weight only by Zonal Inspectors concerned." The "seller" according to the scheme was to present the bills to his clearing agents for despatch of maize and was to receive payment from him at the price indicated for the consignment. This procedure makes it plain that the "seller" was separate and distinguishable from the Punjab Government or the Government of India. The payment made by the plaintiff was in accordance with the mode specified in the scheme and it cannot acceptably be urged, as has been done by Mr. Tuli, that the money having been remitted to and at the instance of the Punjab Government the plaintiff was under the belief that the defendants were in fact the principal parties in the capacity of "sellers". The use of the word "seller" is eschewed in the correspondence addressed by the defendants to the plaintiff.

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In my opinion, it was only to ensure payments against deliveries that the deposit of Rs. 1,45,000 was credited in the account of the clearing agents who were made responsible for the payment and were to be paid a commission for this financial arrangement. There is not a scintilla of evi-

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dence on the record to show that the deliveries were or had to be made by the defendants to the plaintiff. So long as payments were promptly made in the undivided Punjab against deliveries the arrangements worked smoothly and without difficulty. It was only after the partition when the maize account had been left behind with the United Commercial Bank at Lahore, that there arose a diffidence on the part of the stockists and clearing agents to honour the prepartition liabilities presumably because they could no longer draw on the account with the United Commercial Bank. The specific use of the words "seller" and "actual seller" in the memorandum as against "allotment" and "procurement" negative the theory that the Government itself had entered into the transaction of sale. The word "allotment" in the context must be construed to intend its ordinary meaning which is "the act of apportioning". The allotment was made by the Government in the exercise of power under the Essential Supplies (Temporary Powers) Act, 1946. Under section 3 of this Act, powers are given to the Government for the control of production, supply, distribution, etc., of essential commodities like maize and in clause (d) of subsection (2), an order under this section may provide for "regulating by licenses, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity". It is common ground that the Textile Commissioner was appointed the controlling authority under the regulatory powers of the Essential Supplies (Temporary Powers) Act to grant licenses for the manufacture of starch from maize. The plaintiff company like the other starch manufacturers could use maize only under the authority of the Textile Commissioner. From an examination of the correspondence, I am inclined

to agree with the Advocate-General that the defendants had allotted the maize under the regulatory provisions of the Essential Supplies (Temporary Powers) Act, 1946, and there is no convincing evidence to show that they ever accepted the position of "sellers" of the commodity. Mr. Tuli's analogy of allotment of shares under the Companies Act does not appear to be quite apposite. Allotment under the Companies Act means a definite acceptance of an offer of a prospective shareholder. The technical meaning assigned to the word "allotment" under the Companies Act cannot be imported in the present transaction to equate the 'allotment' of maize with 'sale'.

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The legal position no doubt is that where the promisee parts with something at the request of the promisor, it is immaterial whether the promisor receives anything, and necessarily involves the conclusion that the consideration given by the promisee for a promise need not move to the promisor, but may move to anyone requested by the offer (Williston on Contracts, Volume I, page 449, Section 113, 1957 edition). The counsel for the appellant has submitted that the sum of Rs. 1,45,000 was paid on the asking of the defendants for the allotment of maize which according to his contention is indistinguishable from sale. Beneath the veneer of plausibility of this argument, the intention and conduct of the parties constitute the hard core of reality and on a careful consideration of all the circumstances, I have reached the conclusion that though the consideration had moved at the instance of the defendants, the transaction did not constitute a sale in which the Government were the sellers. The Government was merely acting as a *via media* and was neither a contracting party

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nor a beneficiary of the 'contract'. It would not be irrelevant to mention that in some of the unreported decisions of this Court, the view has been taken that in transactions akin to the one in the instant case, Government is not a contracting party. In *Wholesale Syndicate, Gurdaspur v. The State of Punjab, etc.* (R.F.A. 214 of 1954), decided by the Chief Justice and Pandit, J., on 9th March, 1960, the transaction in dispute related to the recovery of price of 602 bags of Argentine maize supplied by the plaintiff under the directions of the Punjab Government. The Clearing agents were also impleaded as defendants with the Government of Punjab. The suit was decreed only against the clearing agents and the appeal to the High Court to make the Government of Punjab also liable was dismissed, and it was held that there was no privity of contract with the Punjab Government. In *M/s Amin Chand-Bhola Nath v. Union of India* (R.F.A. 104 of 1951) decided on 13th March, 1959 (Gosain and Grover, JJ.) where the sale price of galvanized steel wire was deposited in the Government's account with the Imperial Bank of India, Jullundur, it was held that it was not sufficient to fix the Union of India with liability for recovery of undelivered stock although the offer as in the present case was made by the Government of India. In *Union of India v. The Ludhiana Foodgrain Pacca Arhities Association Ltd., etc.* (R.F.A. 283 of 1951), decided by Falshaw and Dua, JJ., on 26th September, 1958, it was observed by Falshaw, J., that although the order was placed by the Punjab Government through and in the name of its officer for supply of wheat to the Railway Administration, it did not make the Punjab Government a principal party. The common feature of all the decisions was that the Punjab Government acted in the exercise of statutory powers in respect of controlled commodities

In coming to the conclusion that the Government was not a contracting party, I do not wish to be understood to have accepted the argument of Mr. Sikri that the money not having been deposited in the public accounts could not be regarded as a payment intended for the Government. The cogency of the point is lost when we find that there was no provision corresponding to Article 266 of the Constitution of India in the Government of India Act, 1935, which governed the situation at the time of the present transaction. It remains, however, a matter of importance that the amount in deposit with the United Commercial Bank was credited for a specific purpose and was earmarked for the transaction in dispute.

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Having come to the conclusion that the defendants are not contractually bound, the question still arises whether there is any liability on the basis of a *quasi* contract under section 70 of the Indian Contract Act. Under section 70, there is an obligation of persons enjoying benefit of non-gratuitous acts to restore the thing or to make compensation for it. As observed by Williston on Contract, Volume I, at page 13, "Quasi contractual obligations are imposed by the law for the purpose of bringing about justice without reference to the intention of the parties". The Government being in a position to enforce the deliveries of the maize which are due to the plaintiff for the price actually paid by it, it may be argued that there is some kind of moral obligation of the Government. It has, however, to be borne in mind that there are two aspects of this obligation. The money which was to be utilised for payment of the undelivered stocks has been left behind in Pakistan and the Government of that State has declined to accord permission to the Bank to remit it here. The question, therefore,

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arises, whose duty it is to recompense the plain-  
tiff ?

This brings me to the question of the respective liabilities of the different Governments under the Indian Independence (Rights, Property and Liabilities) Order, 1947. Before I deal with the relevant provisions of this Order, I may mention that the Punjab Partition (Contracts) Order, 1947, is not applicable to the present case as the contract admittedly was not drawn up under the provisions of section 175 of the Government of India Act. The provisions of the Indian Independence (Rights, Property and Liabilities) Order, 1947, relied upon by the parties are reproduced below for facility of reference :—

“8. (3) Any contract made on behalf of the Province of the Punjab before the appointed day shall, as from that day,—

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

(b) in any other case be deemed to have been made on behalf of the Province of West Punjab instead of the Province of the Punjab ;

\* \* \* \* \*

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

\* \* \* \* \*

(c) in the case of liabilities of the Province of the Punjab, be liabilities of the Province of West Punjab.



10. Where immediately before the appointed day the Governor-General in Council is subject to any liability in respect of an actionable wrong other than breach of contract, that liability shall,—

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(3) Where immediately before the appointed day the Province of the Punjab is subject to any such liability as aforesaid, that liability shall,—

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(a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of West Punjab, be a liability of that Province ;

(b) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of East Punjab, be a liability of that Province ; and

(c) in any other case, be a joint liability of the Provinces of East and West Punjab.”

Mr. Tuli has argued that the transaction falls within the ambit of Article 8(3)(a). According to him on the appointed day all that remained to be done was delivery of maize from the Hoshiarpur centre which is in the East Punjab, and the contract must, therefore, be deemed for the exclusive purposes of this State. I have already expressed my view that there was no contract binding on any Government. Even if it be regarded that there was a contract it was one for delivery of maize both from Lyallpur and Hoshiarpur and the exclusive purpose cannot be said to be that of East Punjab. Moreover, the deliveries were to be made at Phagwara which on the appointed day did not fall within the territories of East Punjab. The contract has to be looked as a whole and not

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only the unexecuted portion of it whose compliance is sought by the plaintiff. The contract, if any, did not fall within sub-clause (a) of clause (3) of Article 8 and therefore the liability, if any, would be of West Punjab under sub-clause (b).

A brief reference may be made to the authorities which have been cited at the bar on this aspect of the case. In *Union of India v. M/s Chaman Lal Loona and Co.* (1), it was held by their Lordships of the Supreme Court that "the purpose of the contract is not determined nor modified by the ultimate disposal of the goods supplied under the contract nor even by the power of control exercised over the goods after contract has been performed." There is nothing in this authority which negatives the contention of the Advocate-General that to determine the question of liability the contract has to be looked at as an integral and indivisible transaction. In the background of this case where the entire consideration was paid for the supply of maize both from Lyallpur and Hoshiarpur centres, it would not be right to spell out an independent contract for the supply of maize at Hoshiarpur, when the money to pay for undelivered stocks is lying in West Punjab. In the *Union of India v. Chinubhai Jeshingbhai and others* (2), a Division Bench of Chagla C. J. and Tendolkar J. held that "on a true construction both of the Independence Act and the Indian Independence (Rights, Property and Liabilities) Order, 1947, it was clear that when it was found that there were goods originally belonging to the Government of India lying at a place which formed part of the Dominion of Pakistan on August 15, those goods fell under the control of that Dominion and that Dominion was entitled to exercise rights of ownership with regard to those

(1) I.L.R. 1957 Punj. 1701.

(2) A.I.R. 1953 Bom. 13.

goods, and that when a contract had been entered into with respect to those goods prior to 15th August, 1947, all liability in respect of that contract devolved upon the Dominion of Pakistan". On a parity of reasoning, it has been urged by Mr. Tuli that it was the Province of East Punjab on 15th of August, 1947, which had the power in respect of these goods and therefore the liability should devolve on it. In my opinion, the facts of the present case do not warrant an application of the principle enunciated by the Division Bench of the Bombay High Court with which I am in respectful agreement. The undelivered stocks were for the purpose of Kapurthala State and the plaintiff only seeks enforcement of a portion of the contract.

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In the Full Bench decision of *Union of India v. Firm Balwant Singh-Jaswant Singh* (1), an observation was made by Falshaw J. that where the destination of the carriage of goods was some point in Pakistan the purpose was the purpose of Pakistan. This reasoning can be employed to support the argument of the Advocate-General that though the goods had to be delivered at Hoshiarpur they were destined for Phagwara where the plaintiff-company is situate. Kapurthala State on the appointed date was outside the State of East Punjab, and the purpose of the contract, even of the portion which remained unperformed, was not an exclusive purpose of the Government of East Punjab. In *Krishna Ranjan Basu Ray v. Union of India* (2), it was held that it is wrong to consider the earning of profit as the purpose of the contract under the Indian Independence (Rights, Property and Liabilities) Order, 1947. Where the purpose of the contract is the carriage of goods and where the destination was

(1) I.L.R. 1956 Punj. 1129.

(2) A.I.R. 1954 Cal. 623.

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some point in Pakistan it seems to be reasonable to hold that the purpose would be the purpose of the Dominion of Pakistan. The profit earning motive of either party to the contract is not the criterion by which the "purpose" within the meaning of section 8 is to be judged". The principles enunciated in this authority are unexceptionable, but I do not see how the counsel for the appellant can derive from it any assistance for the contentions raised by him. There was no profit making element in the present contract and if destination of goods alone is the test the purpose cannot be regarded as exclusively that of East Punjab.

I am not inclined to agree with the Advocate-General that the liability is a financial obligation under Article 9 which deals with the loans, guarantees and other financial obligations. The phrase "other financial obligations" is to be read *ejusdem generis* with the terms "loans" and "guarantees". The amount cannot be claimed either as a loan or a guarantee from either of the two defendants and clause 9 is clearly inapplicable.

If it is an obligation which amounts to an actionable wrong other than the breach of contract under clause 10, it has to be seen where the cause of action arose. The cause of action consists of such bundle of facts as are necessary to establish the case of a plaintiff. It may be that the maize to be delivered is at Hoshiarpur, but that is not the only fact which gives rise to the present cause of action. Can the plaintiff succeed without establishing that a sum of Rs. 1,45,000 was remitted by it to the undivided Punjab Government at Lahore on or before the 13th of June, 1947? The answer must be in the negative as it is a cardinal point of the plaintiff's case that the bank drafts were sent by

it at the behest of the Punjab Government at Lahore, where the money was deposited with the United Commercial Bank. That part of the cause of action clearly arose in Lahore which is now within the Dominion of Pakistan. Moreover, it is an essential wing of the transaction that the deliveries had to be effected in Lyallpur and Hoshiarpur. At best, it can be said that the cause of action arose exclusively neither in the territories of Pakistan nor India. It, therefore, becomes joint liability of the Dominions of India and Pakistan. It was recently held by a Division Bench of the Calcutta High Court in *Rahimuddin Ahammad v. State of West Bengal* (1), that claim for refund of excess of income-tax is a claim based on actionable wrong and Article 10 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, is applicable. The word "actionable wrong" has been given a very wide interpretation in the *State of Tripura v. Province of East Bengal* (2). The plaintiff has claimed that he is being unjustly deprived of the refund of money which he had deposited for a specific purpose. Either the delivery of maize should be effected or the money should be refunded. In the last analysis, the Punjab Government is being fastened with the liability for an actionable wrong, and the cause of action not having arisen wholly either in West or East Punjab, the liability becomes joint of the Provinces of East and West Punjab.

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To summarise the results of the aforesaid discussion, I would hold that the parties are not contractually bound to each other. To put the position in another way, the buyer and seller of controlled commodities like maize were separated from each other by the wall of statutory controls and

(1) A.J.R. 1959 Cal. 753.

(2) A.J.R. 1951 S.C. 23.

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regulations and this barrier could be surmounted only with the aid and intervention of the Government. In establishing this essential contact the defendants wrote letters of the 28th of April, 1947, 3rd of June, 1957 and 16th of June, 1947, which have to be regarded not in *vacuo*, but in relation to the procedure laid down in the memorandum. These letters may on first sight give the semblance of a situation in which the Government itself is a contracting party, but in the context of admitted facts and circumstances, it would be just an idle pretension for the plaintiff to say that it was left with an impression—and Mr. Tuli has put it no higher—that the Government itself had undertaken to sell the maize. Even assuming for the sake of argument that there was a contract, the liability does not devolve on East Punjab whose successor defendant No. 2 is. There are four possible parties who may be liable for the plaintiff; the Union of India, the Punjab State, the Nagrota Syndicate and Messrs Arrooramal-Durgadass. The suit has been brought only against the Union of India and the Punjab State and in my view neither of the two Governments is liable even on any actionable wrong under the provisions of the Indian Independence (Rights, Property and Liabilities) Order, 1947. This result is not only in accord with the strict legal position, but also, in my opinion, in spite of the very vehement arguments of Mr. Tuli, in consonance with the principles of equity and fair play. The Punjab Government who is sought to be made liable has not unjustly enriched itself in any manner and whatever hold the Government of the undivided, Punjab had over the funds left behind in Pakistan in the account of the plaintiff-company, it cannot be denied that neither of the two defendants is in a position to enforce its fiat in this direction. It appears from the appendix printed in the paper

book at pages 139 to 150 that there are many other claims like that of the plaintiff. No instance has been given where a suit of this nature has been decreed against the Government of Punjab or the Union of India. I am, therefore, inclined to the view that the loss should lie where it has fallen.

I may also mention in parenthesis that Mr. Tuli has not pressed his argument for the award of damages claimed in the suit and would be quite content with a decree for the amount standing to the credit of the plaintiff company with the United Commercial Bank with interest at 6 per cent per annum.

This appeal, in my view, must fail and should be dismissed. I would, however, make no order as to costs.

TEK CHAND, J.—I have read the judgment of my brother Shamsheer Bahadur, J., and I regret that I have not been able to persuade myself to concur in the order proposed by him. I am constrained to come to a different conclusion as in my view the plaintiff deserves to succeed and a decree for the principal amount with interest should be passed in his favour and against the Punjab State.

The plaintiff—Sukhjit Starch and Chemicals Ltd.—had instituted this suit impleading the Union of India and the State of Punjab as defendants Nos. 1 and 2 for the recovery of Rs. 1,27,253 as an unpaid balance out of the purchase money of Rs. 1,45,000, damages and interest at 6 per cent on account of the breach of contract. The plaintiff also claimed costs and future interest. The plaintiff-company was engaged in the business of manufacturing starch at Phagwara in the erstwhile Kapurthala State.

Under the Essential Supplies (Temporary Powers) Act (XXIV of 1946) the production,

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supply and distribution of, and trade and commerce in 'essential commodities' such as food-stuffs, was controlled during a limited period by the Central Government. Under section 3 extensive powers were conferred upon the Central Government. Section 3(2) so far as it is relevant for the present case, is in the following terms :-

“(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) \* \* \* \* \*

(b) \* \* \* \* \*

(c) for controlling the prices at which any essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale ;

(f) for requiring any person holding stock of an essential commodity to sell the whole or a specified part of the stock at such prices and to such persons or class of persons or in such circumstances, as may be specified in the order;

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs or cotton textiles, which in the opinion of the authority



making the order are, or if unregulated are likely to be, detrimental to public interest.”

Section 4 of the Act conferred upon the Central Government power to delegate its power under section 3, upon its Subordinate officers, or upon the State Government, or their officers.

On 28th April, 1947, the Textile Commissioner, Bombay, addressed a letter (E.A. No. 55) to the plaintiff stating that a small quantity of maize, found unfit for human consumption, was available from the Punjab province. This maize was imported from Argentine and was lying in different centres of the province. The question of making available this maize for the manufacture of starch was under consideration and it was likely that this would be made available at Rs. 7 to Rs. 8 per maund F.O.R. station of despatch. The plaintiff-company was asked that if it was interested in using this maize in the manufacture of starch, 700 tons could be allotted for this purpose and the company should inform the Textile Commissioner telegraphically. On this, the plaintiff sent a telegram agreeing to purchase the entire quantity of 700 tons of Argentine maize. The telegram was followed by a letter, dated 1st May, 1947 (E.A. No. 57), sent by the Managing Agent of the Plaintiff-company stating its acceptance of the offer.

On 3rd June, 1947, the plaintiff-company was informed that 640 tons of maize had been allotted to it at Rs. 8 per maund. The Director of Food purchase, Government of Punjab, Lahore, had sent a telegram to the plaintiff that the above quantity of Argentine maize had been allotted and a Bank draft or telegraphic remittance for Rs. 1,41,000 in favour of Director, Food Purchase, be sent before 13th June, 1947, failing which stocks would be allotted to some one else. The plaintiff-company intimated its acceptance of the above offer

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to the Textile Commissioner, Bombay, on 7th June, 1947,—*vide* Exhibit P. 2 (E.A. 47). Four bank drafts of Rs. 1,00,000, 15,000, 20,000 and 10,000, respectively, totalling Rs. 1,45,000 were sent by the plaintiff to the Director, Food Purchase. On receipt of these drafts the Controller of Food Accounts, Punjab, addressed a letter, dated 16th June, 1947 (E.A. Nos. 51/52), to the Manager, United Commercial Bank, Lahore, enclosing the four drafts and informing the Bank that the amount was intended for the supply of 640 tons of maize to the plaintiff-company at Phagwara and the money should be kept in deposit with the Bank as a sundry account for making payments to 'the Punjab Government clearing agents'. The Bank was asked to send information of the encashing of the Bank draft as the action of issuing permits was being withheld till then. A copy of this letter was sent for information to the plaintiff and also to the clearing agents Messrs Arrooramal-Durgadass and some others with the remarks that bills evidencing despatch of maize to the plaintiff-company should be presented to the United Commercial Bank Ltd., Lahore, and payment received,—*vide* P. 11 (E.A. No. 119). The permit was issued to the plaintiff-company and a quantity of maize at Lyallpur and another quantity at Hoshiarpur was allotted to it. The entire quantity of maize from Lyallpur about 8,073 maunds was taken delivery of. Regarding the balance of maize, which was at Hoshiarpur, the plaintiff-company had lifted only 2,431 maunds. The remaining 6,288 maunds of maize could not be removed from Hoshiarpur as the clearing agents had refused to supply the same. The Government was periodically revalidating the permit in favour of the plaintiff and finally it was revalidated up to 30th November, 1947,—*vide* Exhibit SCWI/A, dated 14th

November, 1947 (E. A. No. 137). The stockists of the maize at Hoshiarpur were Messrs Food grain Syndicate, Nagrota, District Kangra. On 10th November, 1947, Nagrota Syndicate addressed a telegram to the plaintiff that Punjab Government had permitted them to sell maize to any starch factory which may be interested and the plaintiff should send its representative. On 13th November, 1947, Nagrota Syndicate addressed a letter to the plaintiff stating that if it desired to purchase the maize its representative should reach Nagrota immediately otherwise maize would be disposed of to some other place.

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On 26th November, 1947, the Managing Agent of the company wrote a letter (Exhibit P. 10-E.A. Nos. 143 to 145) to the Director-General, Food and Civil Supplies, East Punjab, Ambala Cantt., stating that they had sent their special representative Mr. Yagya Paul to contact the Nagrota Syndicate for the supply of 6,100 maunds of Argentine maize out of total quantity of 8,688 maunds maize allotted to them by him from Hoshiarpur under his permit, but the Syndicate had refused to supply the balance of maize on the ground, among others, that the Nagrota Syndicate had been permitted by the Director-General to sell their stock of maize lying with them to any starch factory they liked and therefore the permit which had been granted had become ineffective. It was also mentioned that the Nagrota Syndicate were prepared to part with the maize lying in stock with them at a higher rate above the settled rate and quoted the price at Rs. 12 to Rs. 12-4-0 per maund. The Managing Agent of the plaintiff-company further pointed out that they had already paid the full value of the maize to the Government and, therefore, their transaction with the Government for sale and purchase

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of the Argentine maize, to the extent, to which, it was allotted to the plaintiff, had been completed. and it was expected, that the Government would force the Nagrota Syndicate or Messrs Arrooramal-Durgadass, whosoever was concerned in the matter for the delivery of the balance maize to the company under the terms of the allotment. The plaintiff-company sought Government's help in getting the balance quantity of maize from Hoshiarpur. A request was also made to extend the time limit of permit up to 31st December, 1947, by which time it would be possible to get the entire maize removed to Phagwara.

By letter, dated 3rd January, 1948, Exhibit C.W.3/A, the Assistant Director, Food Permit, informed the plaintiff—

“It has been decided by this Government that the previous allocations made to the Starch Factories by this Department in respect of the undespached stocks of Argentine Maize should be treated as cancelled. Government would not fix any price for the stocks in question and now it is for the Syndicates and the Starch Factories to settle between themselves the purchases on the spot in respect of them.

In view of the above position orders are being separately issued for the refund of the balance of monies deposited by the Starch Factories.”

In order to complete the story reference may also be made to the correspondence between the plaintiff and the Government as to the refund of the deposit made by the plaintiff, and also as to

its transfer to East Punjab. On 8th August, 1947, Shri E. N. Mangat Rai, Director-General of Food, Punjab, addressed a letter, Exhibit D. 4, to the Managers of three Banks including the United Commercial Bank Ltd., Lahore, telling them that at that time the deposits pertaining to the Food Department were lying with the Banks in the name of the Director of Food Purchases, Punjab or Controller of Food Accounts, Punjab, and were being operated as under :—

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“For the Director of Food Purchase, Punjab.

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Controller of Food Accounts Punjab.”

As a result of partition of Punjab the funds as per list attached would with effect from 15th August, 1947, be in the name of Director of Food Purchase, East Punjab and these would be operated upon by the Controller of Food Accounts as under :—

“For the Director of Food Purchase, East Punjab.

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Controller of Food Accounts, East Punjab”. The addressees were required to transfer the deposits to the Imperial Bank of India, Amritsar, and to acknowledge receipt of this letter and to advise the Imperial Bank of India, Amritsar, accordingly. A copy of this letter was forwarded to the Manager, Imperial Bank of India, Amritsar, for information, and it was requested that the amount cited in the attached statement when received from the Banks should be held with the Imperial Bank as sundry account of the person noted against each for making payment to the clearing agents. The list attached contained the name of the plaintiff-company showing an amount of Rs. 79,845-7-9 with the United Commercial Bank Ltd. A copy of this letter was also addressed to the plaintiff. On 19th September,

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1947,—*vide* D.I.A. (E.A. No. 617/6/18) a letter was sent on behalf of the plaintiff to the Director-General, Food Purchase, Punjab Government, Simla, stating that under his instructions a sum of Rs. 1,45,000 towards the costs of 640 tons of Argentine maize had been deposited with the United Commercial Bank Ltd., Lahore. The allocation of this maize was made from Lyallpur and Hoshiarpur Districts and the maize that could be made available from Lyallpur had been removed by the plaintiff. The remaining quantity of the maize was to be supplied from Hoshiarpur District. The letter also stated that the plaintiff was informed by the United Commercial Bank Ltd., Lahore, by letter, dated 30th July, 1947, that a sum of Rs. 79,845-7-9 was lying to the credit of the plaintiff after meeting the bills for maize received from Lyallpur District. The payment for the balance of maize was to be made in Hindustan, and with the change of political situation in the country, the plaintiff did not think it desirable that money should be kept in Pakistan. The plaintiff requested the Director-General, Food Purchase, to order the United Commercial Bank Ltd. to transfer this amount to the plaintiff's credit in some scheduled Bank in Hoshiarpur. On this letter there is a noting of Controller, Food Accounts, that efforts are already being made to get the amount transferred from the United Commercial Bank Ltd., Lahore to the Imperial Bank of India, Ambala Cantonment. On 31st October, 1947, Shri T. C. Sagar, Controller of Food Accounts, East Punjab, sent a letter to the plaintiff (Exhibit D. 2) stating that with reference to the plaintiff's letter dated 19th September, 1947 (Exhibit D.I.A.) efforts were already being made to get the plaintiff's deposits transferred to the Imperial Bank of India, Ambala

and that a final reply would follow. On 26th November, 1947 (Exhibit D. 3) the plaintiff addressed a letter to the Controller, Food Accounts, East Punjab Government, Ambala Cantt., inviting his attention to its letter dated 5th November, 1947, requesting him to order the United Commercial Bank Ltd. to refund the unspent money lying at plaintiff's credit out of Rs. 1,45,000 deposited against the supply of 640 tons of Argentine maize under his instructions. It was also stated in that letter, that the Managing Agent of the plaintiff-company Shri C. L. Rela had seen the Manager, United Commercial Bank, Lahore, now in Delhi in this connection, and he was advised by the Manager to bring an authority letter from the Controller, Food Accounts, for the refund of this money. The Managing Agent requested the Controller for issue of instructions to United Commercial Bank for refunding the above-mentioned unspent money lying at plaintiff's credit at an early date.

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On 3rd May, 1949, Shri T. C. Saggar, Controller of Food Accounts, East Punjab, addressed a letter to the General Manager, United Commercial Bank Ltd., Calcutta,—*vide* Exhibit C.W. 1 (E.A. No. 435) stating, that the Director-General, Food, Punjab, had requested the Lahore Branch of the Bank on 7th August, 1947, to transfer Rs. 79,845-7-9 lying with it on account of advances received from Sukhjit Starch and Chemicals Ltd., Phagwara, to the Imperial Bank of India, Amritsar, so as to be operated upon there by the Controller of Food Accounts, East Punjab. It was requested that out of Rs. 79,845-7-9 now lying with the Bank a sum of Rs. 60,172-15-9 should be refunded to the plaintiff-company. A copy of this letter was forwarded to the plaintiff-company's Managing Agent.

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Thus the grievance of the plaintiff-company is, that neither the price of the maize, which had been paid to the Punjab Government at Lahore, had been refunded, nor, the stock of maize lying at Hoshiarpur had been delivered to the company. On the other hand, the East Punjab Government permitted the Nagrota Syndicate to sell the maize to anyone it liked and cancelled the allocations to the plaintiff. In this way, neither the amount of Rs. 60,172-15-9, the net balance out of Rs. 1,45,000 paid at Lahore has been refunded to the plaintiff-company, nor has the allotted quantity of maize been supplied to it from Hoshiarpur District.

A notice under section 80, Civil Procedure Code (Exhibit P. 1), was served upon the East Punjab Government and also on the Central Government. A demand was made for payment of Rs. 60,172-15-9 as the price of undelivered maize and Rs. 50,000 on account of damages sustained by the plaintiff in all, for Rs. 1,10,172-15-9 with interest at 6 per cent per annum from the date of the breach of the contract up to the date of the payment. A suit for the recovery of the above amount was filed in July, 1950, and the cause of action as mentioned in the plaint is, that on 3rd January the plaintiff's allotment was cancelled and the supply of the undespached maize from Hoshiarpur was refused.

Two written statements have been filed on behalf of the Central and State Governments, respectively. On behalf of defendant No. 1 it was averred that the contract, if any, was with the United Punjab and if there was any breach the plaintiff could only sue the Punjab Government as it existed before the partition. As regards non-delivery of the maize from Hoshiarpur District, it was stated, that on account of heavy rains in



Hoshiarpur and disturbed transport system stocks were damaged and with a view to save the stocks from further loss the undespached allocations were cancelled. Some efforts had been made to get the deposits transferred to East Punjab, but they did not materialise. It was also averred that it was decided by the Civil Supplies Partition Committee that all deposits pertaining to maize, millet and barley should be taken over by Punjab (I) Government and the several Banks, holding such deposits, including the United Commercial Bank, Lahore, which held maize deposits of the plaintiff, were asked to transfer all such deposits to the Imperial Bank of India, Amritsar, at the time of partition. The amount was not transferred by the Bank in time and afterwards due to the intervention of Punjab (P) Government, the Bank was informed that the authority for the transfer before partition had lapsed with the partition and authority had now to be produced from Punjab (P) Government. The latter Government had not yet agreed to the issue of the desired authority despite best efforts of the Government of India.

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The failure to get deposit from the bank has been attributed to the unhelpful attitude of the Punjab (P) Government and the Bank. It was also stated that the Government was doing its utmost to come to settlement with the Punjab Government (P), but it was helpless in the matter and the liability for anything due to the plaintiff devolved on the Punjab Government (P). It was also averred that there was no contract between the plaintiff and the defendant and consequently no breach had been committed on the part of the defendant.

The second defendant (Punjab Government) has also denied the plaintiff's claim on similar

Sukhjit Starch grounds. The plaintiff filed replication in which  
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The Union of The Senior Sub-Judge, Hoshiarpur, framed  
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- (1) Are the plaintiffs not entitled to maintain the suit because of any defects in notices under section 80, Civil Procedure Code, served on the defendants ?
- (2) Did the defendants enter into a contract for the sale of 640 tons of maize to the plaintiff-company at the rate of Rs. 8 per maund, through properly authorised officers ?
- (3) Is the suit within limitation ?
- (4) Did the plaintiff pay a sum of Rs. 1,45,000 to the defendants through the United Commercial Bank of Lahore ?
- (5) Is a sum of Rs. 60,172-15-9 due back to the plaintiff as price of maize undelivered to the plaintiff ?
- (6) Have the defendants committed a breach of the contract ?
- (7) Is the plaintiff entitled to claim the sum due to it and the damages for the breach of contract in light of the provisions of the Indian Independence (Rights, Property and Liabilities) Order of 1947 ?
- (8) To what damages, if any, inclusive of interest is the plaintiff entitled and against whom ?

(9) Are the defendants estopped from urging their non-liability by their acts, conduct and omissions ?

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(10) To what compensatory costs under section 35-A, Civil Procedure Code, if any, are the defendants entitled ?

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The first issue was decided in plaintiff's favour and it was held that a valid notice under section 80, Civil Procedure Code, had been served. Issues 2, 5, 6 and 7 were discussed together, and the trial Court found these issues against the plaintiff, holding, that the money lay in the Bank in plaintiff's account, and that there was no breach of contract on the part of the defendants nor were they otherwise liable to the plaintiff. The Punjab State also was not liable to the plaintiff, because the contract was not for the exclusive benefit of the East Punjab Government and under Clause 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947. The liability was of the West Pakistan Government. The suit was found to be within time. On issue No. 8 it was held, that if the plaintiff-company had succeeded, it would not have been entitled to any damages, but only to Rs. 60,172-15-9 and to interest at the rate of 6 per cent per annum on that amount. Issue No. 9 was decided against the plaintiff, and it was held, that there was no act or omission on the part of either defendant, whereby, it could be estopped from raising the plea, that it was not liable to the plaintiff for the refund of the amount deposited in the Bank or to pay any damages. The special costs as claimed by the defendants were refused.

On issue No. 11 the trial Court observed, that through carelessness of the Bank the amount was not transferred to Imperial Bank of India at

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Amritsar, though so ordered by the United Punjab Government by letter (Exhibit D. 4) dated 8th August, 1947, and the plaintiff should have sued the Bank for the refund of the amount and for the damages, if any. The defendants were absolved from all liability.

On the above findings the trial Court dismissed the plaintiff's suit with costs.

Lengthy arguments have been addressed by the learned counsel for the parties.

The first point which has been debated before us is, whether there was a contract entered into by either of the defendants for the sale of the maize. It was maintained by the learned Advocate-General that neither of the defendants was the owner of the maize, which was the property of Nagrota Syndicate, and no Government could enter into a contract for sale of goods which did not belong to it. The Government had come into the picture in the course of a scheme, for distribution of food stuffs, as it had to regulate the supply of maize and other essential goods to the people.

The second point that has been canvassed before us is, that under the provisions of the Indian Independence (Rights, Property and Liabilities) Order, 1947, the contract, if any, was for purposes of West Punjab, or, for purposes of supplying maize to Kapurthala State and this was not for any exclusive purpose of East Punjab.

Thirdly, it was contended, that if the liability was not contractual, then the liability, to refund the money, under section 70 of the Indian Contract Act, which had been deposited in Lahore, was of the West Punjab Government. Alternatively

it was at the best, a joint liability of the Governments of the East Punjab and the West Punjab, and as the latter had not been impleaded, the suit should fail. The arguments which have been advanced by the learned Advocate-General have left me unimpressed.

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I may first address myself to the argument of the learned Advocate-General, that the Government was not the real owner of the maize in question, and, therefore, there could be no contract of sale of the maize with the Government as the seller and the Government could not, therefore, be a contracting party for the sale of the maize. Pursuing this line of argument, Mr. Sikri said that nowhere in the course of the correspondence, the officers of the Government had used the word 'sale'. In the first letter sent by the Textile Commissioner, dated 28th April, 1947, to the plaintiff-company all that was said was, that the plaintiff could be 'allotted' 700 tons of maize. But the word 'allot' simply signifies distribution by lots or by parcelling out things in parts or portions, to individuals concerned. It also means setting apart as one's share, or to assign as a share, or a lot. In the circumstances of a particular case, goods in certain portions, numbers or quantity may be offered for sale in lots by a seller. The use of the word 'allot' does not exclude sale. It is well-known that stock companies when selling their shares to the prospective purchasers are said to 'allot' a particular number of shares. Thus 'allot' means to set apart a portion of a thing or things to a person as his share; and on allotment, the final title of the thing allotted passes to the allottee. The term 'allotment' is used only to indicate the apportionment or division, and its use in this case does not militate against a particular quantity of maize having been sold to the

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plaintiff-company. The use of the word 'allot' does not in any way advance the contention of the learned Advocate-General. This letter clearly indicates an intention to offer for sale this maize to the plaintiff-company, and it refers to the 'price' estimated at Rs. 7 to 8 per maund F.O.R. station of despatch. Further, the plaintiff-company is asked that in case it is interested in 'acquiring the maize' it should send a telegram when the 'definite price' will be intimated as it is expected to be finalised soon. In similar strain, the learned Advocate-General argued, that the word 'released' occurring in plaintiff's letter dated 1st May, 1947, to the Textile Commissioner (E.A. No. 57) in relation to 700 tons of Argentine maize for manufacture of starch was a pointer to the nature of the transaction. On 3rd June, 1947, the Textile Commissioner, by letter (E. A. 53) informed the plaintiff-company, that 640 tons of maize had been allotted to it for the manufacture of starch at Rs. 8 per maund F.O.R. station of despatch, and the plaintiffs should immediately contact the Director of Food Purchases, Government of Punjab, Lahore, for obtaining supplies. The plaintiff-company had accepted the offer, and sent a remittance of Rs. 1,45,000 as desired, in favour of Director, Food Purchases, Government of Punjab, Lahore. The remittance was by four bank drafts of Rs. 1 lac, 15 thousand, 20 thousand and 10 thousand each, respectively. The contract for the supply of 640 tons of maize was thus completed; and so far as the plaintiff-company was concerned, on having remitted the price, the contract had been executed. On the side of the other party, the contract was executory, and it would have been performed only after the contracted quantity had been supplied. The parties to this contract were no other than the plaintiff-company on the one side and the Government on

the other. It admits of no doubt, that a binding contract, is reached, by the acceptance of an offer; subject, of course, to other essentials such as legality, capacity, the mutuality of consent, and in some cases, form. In this case, there is no room, whatsoever, for any doubt, as to mutuality or reciprocal meeting of the minds. There being complete concurrence on this score, the contract was binding, and did not suffer from any lacuna. It is not the case of any party, that subsequently there was any novation of the contract. Up to the stage of the completion of the contract, and payment of the price by the plaintiff-company no third party, viz., Nagrota Syndicate, the Clearing Agents or the United Commercial Bank had figured in any capacity much less as a contracting party. By letter dated 16th June, 1947 (Exhibit P. 11), the Controller of Food Accounts, Punjab, informed the Manager, United Commercial Bank, Ltd., Lahore, that the amount of Rs. 1,45,000 for which the bank drafts were enclosed, was intended for the supply of 640 tons of maize to the plaintiff-company, and this amount was to be kept in deposit with the bank as a sundry account for making payment to the Punjab Government Clearing Agents. The bank was required to inform the Controller as soon as the drafts were encashed, as the action of issuing permits was being withheld till then. A copy of this letter was forwarded to the plaintiff-company and also to Messrs Arrooramal-Durgadas and other clearing agents with the remarks "that the bills evidencing despatch of maize to the plaintiff-company should be presented at the United Commercial Bank Ltd., Lahore, and payment received". The price had been paid by the plaintiff-company to the Director, Food Purchases, as required. The manner, in which this amount was subsequently dealt with by the Government, was not the concern

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of the plaintiffs and its disbursement to any person or agents was not subject to the control of the plaintiff-company. With the subsequent paying out of this money, by the Controller of Food Accounts, or by any other officer or agent, of the Government, the plaintiff-company was not concerned; and, it had absolutely no say in the matter. Moreover, the corresponding obligation of the Government, as the other party to the contract, was to supply the maize F.O.R. station of despatch, to the plaintiff-company. So long as the plaintiff-company was to be supplied the agreed quantity of maize, it was not interested in the procedural method adopted by the Government.

Out of the allotted quantity of maize, the entire stock made available to the plaintiff-company from Lyallpur stock, i.e., 8,073-25-14 maunds had been taken delivery of by the plaintiff-company before 15th August, 1947. Out of 8,688 maunds of maize which was allotted from Hoshiarpur District, the plaintiff-company had been allowed to lift 2,400 maunds only, but not the balance. The Punjab Government had been revalidating the permits, issued to the plaintiff-company for taking delivery of the maize from Hoshiarpur, from time to time during the months following. The last date when permits in favour of the plaintiff-company had been validated was 14th November, 1947; and letter Exhibit C.W.1/A was sent by the Director-General, Food and Civil Supplies, East Punjab, to the plaintiff-company, extending the validity of the permit dated 25th June, 1947, up to 30th of November, 1947.

On 8th August, 1947, the Director-General of Food, Punjab, addressed a letter to the Manager, United Commercial Bank Ltd., Lahore, and also to two other banks requiring them to transfer these deposits to the Imperial Bank of India,



Amritsar, in the name of Director of Food Purchases, East Punjab, and that these deposits would be operated upon by the Controller of Food Accounts, East Punjab. A copy of this letter was forwarded to the Manager, Imperial Bank of India, Amritsar, and also to the plaintiff-company and others. The amount to the credit of the plaintiff-company as shown in the list was Rs. 79,845-7-9,—*vide* Exhibit D. 4. So far, there is nothing to suggest, that the contract had been rescinded or otherwise varied. On 3rd January, 1948, a letter was sent on behalf of Director-General, Food and Civil Supplies, East Punjab, to the plaintiff-company, stating that it had been decided by the Punjab Government that the previous allocations made to Starch Factories, in respect of the undespached stocks of Argentine Maize should be treated as cancelled; and that Government would not fix any price for the stocks in question and now it was for the Syndicates and the Starch Factories to settle between themselves the purchases on the spot in respect of them. This is the first intimation declining to supply the remaining quantity of maize stock at Hoshiarpur. This letter ended with the following words :

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“In view of the above position orders are being separately issued for the refund of the balance of moneys deposited by the Starch Factories.”

Thus the final position as on 3rd January, 1948, was, that the contract which stood completely executed so far as the plaintiff-company was concerned, on payment of the entire price of 640 tons of maize, stood only partly performed by the other contracting party, in so far, that the maize of the value of Rs. 60,172-15-9, lying at Hoshiarpur remained undelivered, but on behalf of the Government, it was said, that orders for

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the refund of the balance of moneys were being issued. Up to that date, there was no disclaimer on the part of the Government of its liability, so far as the refund of the balance to the plaintiff-company was concerned; and no shelter had been taken behind any one of the pleas now taken up in the written statement, including reference to the Indian Independence (Rights, Property and Liabilities) Order, 1947.

The controversy whether the maize belonged to the Government as maintained by the plaintiffs, or, that it was the property of Nagrota Syndicate, as stressed by the defendants, does not seem to me to be of much consequence, for the purposes of the decision of this case. A number of letters have been read, from which it was sought to deduce, that the Nagrota Syndicate was the owner. Reference was also made to letter, Exhibit P. 10, dated 26th of November, 1947, in which the plaintiff-company had written, that it had sent its special representative to the Nagrota Syndicate for supply of the maize which the latter had refused. It was pointed out by the plaintiff that "we have already paid the full value of the maize to the Government and, therefore, our transaction with the Government for the sale and purchase of the Argentine Maize to the extent to which it was allotted to us has been completed, and it is expected, that the Government will force the Nagrota Syndicate, or Messrs Arrooramal-Durgadas, whosoever, is concerned in the matter for the delivery of the balance maize be given to us under the allotment terms." Reference was also made to a letter dated 13th November, 1947, Exhibit L.C. 1, sent by the Nagrota Syndicate to the plaintiff-company that its representative should reach Nagrota to purchase the maize otherwise it would be disposed of. It was also said that the plaintiff-company was aware, that the owner of the maize was

Nagrota Syndicate and not the Government. Finally it was argued, that the Government, under the scheme of distribution of maize was merely an intermediary between the purchaser and the seller; and this scheme had been adopted, in order to make sure, that the original sellers got their price, in respect of the goods, which the Punjab Government compelled them to sell to a purchaser chosen by the Government. In order to ensure the payment of the price, the Government compelled the purchaser to deposit the price in advance. Thus according to the learned Advocate-General the position of the Government was comparable to that of a guarantor, guaranteeing payment of prices to the owner of the stock and its delivery to the purchaser.

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As I look at this transaction, even assuming the contention of the counsel for the State to be well founded, it is not a valid defence, that the contract for the sale of the maize could not be entered into except by the owner of the maize, i.e., Nagrota Syndicate; and that the Government was under no legal obligation, either to secure the delivery of the remaining supply of the maize from Hoshiarpur District, or, to refund the balance of the purchase price in respect of the undelivered maize. The offer to supply the undelivered maize to the plaintiff-company came from the Government, and the plaintiff-company also communicated its acceptance, to the Government, and performed its part of the obligation by paying the price of Rs. 1,45,000 to the Government. The supply of this maize to the plaintiff-company had been undertaken by the Government. The Government let the plaintiff-company remove the quantity of maize lying in Lyallpur District and small quantity of maize from Hoshiarpur District had also been supplied to the plaintiffs, leaving the stock of maize at Hoshiarpur of the value of

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Rs. 60,172-15-9, still to be supplied. Admittedly, Nagrota Syndicate and the firm of Clearing Agents Messrs Arrooramal-Durgadas, are no party to this contract; the offeror of the maize being the Government and the acceptor being the plaintiff-company.

It has been urged on behalf of the State, that no liability attaches to the State as it was not the owner of the maize. I am also aware of two maxims, *Nihil dat qui non habet*—(He gives nothing who has nothing) and *nemo plus juris ad alienum transferre potest quam ipse habet* (One cannot transfer to another larger right than he himself has). To this well established principle which is embodied in section 27 of the Indian Sale of Goods Act, there are several exceptions; one of them being where the sale is made under statutory powers. Other exceptions are in cases of sale by pawnees, sheriff, master of ships, landlords distraining for rent or inn-keepers and others realising their liens. It is not necessary to give an exhaustive list of other exceptions. Within these exceptions sale by a person who is not the owner is valid. Section 27 of the Indian Sale of Goods Act is reproduced *in extenso*—

“Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person, who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller’s authority to sell :

Provided that where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same :

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Provided that the buyer acts in the good faith and has not at the time of the contract of sale notice that the seller has no authority to sell."

The opening words "subject to the provisions of this Act and of any other law for the time being in force" are significant. Under section 3 of the Essential Supplies (Temporary Powers) Act 24 of 1946, the Central Government, and its subordinate officers, and the State Governments or their officers, to whom the powers had been delegated, were given exhaustive powers to control production, supply and distribution, etc., of essential commodities. In the exercise of these powers the Government could require any person holding stock of an essential commodity to sell the whole or a specific part of the stock at such price and to such persons as may be specified in the order. The Government could control the prices at which such commodities might be bought or sold and could regulate by licences or permits or otherwise their distribution, disposal, acquisition, etc. Maize being a 'foodstuff' within section 2(a) was an essential commodity under this Act. There is no gain saying the fact, that even if the Government was not the owner of the maize in question, it had complete dominion over it including full disposing power. Under these powers, an owner of an essential commodity, could be prohibited from withholding it

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from sale or could be required to sell the whole or specific part of the stock at price to be fixed by the Government. It was in the exercise of these powers, that the maize in question had been offered to the plaintiff-company at the price of Rs. 8 per maund F.O.R. station of despatch. The plaintiff-company when the details had been finalised with it by the Government need not look to any other persons whether stockists, clearing agents or the owners, for performance of the contract, as such persons could not withhold the supply or in any other manner stand in the way of its execution by the Government.

This contract had not been frustrated in any way on the partition of the country, and so far as the stocks in Hoshiarpur District were concerned, their delivery to the plaintiffs F.O.R. station of despatch, was within the power of the Government and this power was not subject to any control of the stockists or of the clearing agents. It is as a result of the Government's own act that the plaintiff has been prevented from taking delivery of the maize, when the Government decided to cancel allocation of the undespached stocks of Argentine Maize to the Starch Factories, and instead, stated, that orders were being separately issued for the refund of the balance of the moneys. The permit which was given by the Government to the plaintiff, was in the nature of a delivery order, and its refusal to revalidate it, through no breach of any condition by the plaintiff-company, was a unilateral act on the part of the Government, and which act of it cannot be set up in justification of its refusal to meet its legal obligation.

In the written statement filed by the Punjab Province as defendant No. 2, the reason given for not delivering the remaining quantity of the maize

was, that "on account of heavy rains in Hoshiarpur, and disturbed system in those days over which the defendant had no control the stocks were damaged and to save the stocks from further losses the undespached allocations were cancelled. "No evidence has been placed on the record in support of this plea. Moreover, it is not comprehensible, how the alleged difficulty stood in the way, as the maize had been allotted to the plaintiff-company "F.O.R. station of despatch". No question of transport was, therefore, involved as it was not the duty of the stockists to transport maize to the plaintiff-company at any place outside Hoshiarpur. So far his risk of damage from rain was concerned, the stocks might have been disposed of after notice to the plaintiff to remove them within a stated period. In this case the plaintiff was never asked to take delivery of the stock, and the plaintiff-company never refused to do so. On the other hand there is ample material on the record to show that the plaintiff-company was anxious, that the remaining quantity of the maize should be supplied to it. It has not been explained how cancellation of the undespached allocations helped the stocks from getting damaged on account of the heavy rains. On the other hand the damage to the stocks due to heavy rains could be avoided by offering delivery to the plaintiff-company. This plea on the part of the Punjab State cannot stand scrutiny, and is in the nature of an afterthought. In no case, however, the cancellation of plaintiff's allocations without notice or without any fault of the company, could be justified.

In view of what has been discussed above, the conclusion, that there was a contract between the plaintiff-company and the Government is inescapable. The plaintiff-company on its side had fully performed its part of the contract by paying the entire price in advance as required. The Punjab

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 Ltd the remaining quantity of the maize lying at  
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 The Union of to its absolute disposal. Moreover, the revalida-  
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 another United Commercial Bank to transfer the relevant  
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 ficant pointer to an acceptance on the part of the  
 Government, of an obligation to the plaintiff-com-  
 pany and to others who were similarly situated.

There was privity, as between the plaintiff and the Government, but none, as between the plaintiff and Nagrota Syndicate as the stockists or M/s Arrooramal Durgadas as the clearing agents. The price had been paid at the bidding and in accordance with the directions of the officers of the Government; and where, and how the amount, representing the price, was deposited or transferred, was a matter exclusively within the control of the Government. After the price had been paid, the plaintiff-company who never deposited the amount with the United Commercial Bank, could not control its disposal. The plaintiff-company could not ask the bank to refund the amount. Thus there was no connection or any legal bond as between the plaintiff and the bank. The relationship was as between the plaintiff and the Government who were the privies to this particular transaction which has all the features of a valid and legally enforceable contract. If, having regard to the exigencies of the situation in the country, or in view of any national emergency, the Government stepped in and assumed power to control production, supply and distribution, etc., of essential commodities and got statutory powers, in order to act as an intermediary between the suppliers and consumers of controlled articles



in the matter of making allocations, determining prices and providing special procedure for realising the prices and supplying the goods, it also thereby owed an obligation to the consumers and suppliers to compensate them for damages resultant upon the acts of the Government and thereby it also took upon itself liabilities, arising in consequence of the responsibilities undertaken.

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Reference in this connection may be made to a recent decision of the Division Bench (consisting of Khosla, C.J., and Pandit, J.) given on 9th of March, 1960, in Regular First Appeal No. 214 of 1954. The facts of that case were that the plaintiffs, who were "Wholesale Syndicate Gurdaspur" stockists of Argentine Maize had supplied under direction of the Punjab Government, who was defendant No. 1, maize to a concern known as the Patiala Starch and Chemical Works Ltd., Rajpura, through defendant No. 2, Messrs Prem Nath, Pran Nath, who were the clearing agents of the Punjab Government. The suit was for the recovery of the price of 620 bags of Argentine Maize. The distinguishing feature of that case was that the price of the goods was actually received by the clearing agents (defendant No. 2) from the consignee, i.e., the Patiala Starch and Chemical Works Ltd., Rajpura. It was held in that case, that there was a privity of contract between the plaintiffs, who were the suppliers, and defendant No. 2 the clearing agents, who had received the price from the consumer. An application was made by the consignee through defendant No. 2 the clearing agents for the purchase of maize and the latter approached the Government and sanction was given, which amounted to a direction for the transfer of 620 bags of maize to defendant No. 2 for being supplied to the firm at Rajpura. The maize was sent to Rajpura and the R. R. was

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sent to the clearing agents, who acquired the commodity and delivered it to the Rajpura firm and received the price. On these facts it was held, that the Punjab State was not the purchaser of the maize, there being no privity between the supplier and the State, but only between the plaintiff and the clearing agents. It was held that the Punjab State could not be held liable as the seller was the plaintiff and the purchaser was defendant No. 2. The decree of the trial Court against defendant No. 2 was maintained but the plaintiff's suit as against the Punjab State was dismissed. In view of the facts of that case, no other order could be passed. I do not find any analogy between the facts of the two cases; and the reasoning in that case, does not lend itself to a conclusion in favour of the Punjab State, in this case. No support from that decision can be obtained by the Punjab State in this case, as the negotiating and contracting parties in this case were the plaintiffs and the Government between whom there was privity of contract.

Alternatively, the next question that arises in this case is, that if for any reason it be assumed that there was no contract between the plaintiff-company and the Government, whether the plaintiff's entitled to the refund of the balance of the price for the goods not supplied on the principle contained in section 70 of the Indian Contract Act which runs as under:—

“Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof the latter is bound to make compensation to the former in respect of or to restore, the thing as done or delivered.”

In this case Rs. 1,45,000 were paid towards the price in accordance with the directions of the Government, and undeniably it was not a gratuitous payment, and the benefit of the money, was enjoyed by the Punjab Government, and the latter is bound to make compensation to the plaintiff-company to the extent to which it was enriched. The expression "does anything", occurring in section 70 includes payment of money,—*vide Nagendra Nath Roy and others v. Jugal Kishore Roy and others* (1), *Smith v. Dinonath Mookerjee and others* (2), *Nobin Krishna Bose and another v. Mon Mohun Bose and others* (3), *Desai Himatsingji Joravarsingji v. Bhava Bhai Kaya Bhai* (4), and *Nath Prasad v. Baij Nath* (5), though, a dissenting view has been expressed by Mathur, J., in a later Allahabad decision *Sheo Nath Prasad v. Sarjoo Nonia and another* (6). An action lies in such a case, where the payment was for a consideration, which failed, the reason being that *ex aequo et bono*, the defendant ought to refund the money received. To quote the words of Lord Mansfield in *Moses v. Macferlan* (7)—

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"But it (action) lies, for money paid by mistake; or upon a consideration which happens to fail; or for money got through imposition (express, or implied); or extortion; or oppression; or undue advantage taken of the plaintiff's situation, contrary to laws made for the protection of persons under those circumstances.

(1) A.I.R. 1925 Cal. 1097.

(2) I.L.R. 12 Cal. 213.

(3) I.L.R. 7 Cal. 573.

(4) I.L.R. 4 Bom. 643.

(5) I.L.R. 3 All. 66 (F.B.).

(6) A.I.R. 1943 All. 220 (F.B.).

(7) [(1760) 2 Burr. page 1005 (1012)]=97 E.R. 676 (681).

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In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."

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The principle of section 70 applies to cases, even where there is no question of privity of contract, as in such cases, the Court has only to see whether the plaintiff is entitled to restoration of money, for reasons resting on natural justice and on the ground of defendants' unjust enrichment. The plaintiff having paid the money at the request of the defendant, the former is entitled to be compensated to the extent of the failure of consideration. In such a case, a liability, even if it is not strictly contractual, will, nevertheless, be implied by law, the obligation being *quasi* contractual. Section 70 imposes a liability, even in the absence of mutual assent. It embodies the doctrine of *quantum meruit*, but in its scope, section 70 has a wider ambit than its counterpart in the English Law, and it goes far beyond it,—*vide Secretary of State v. G. T. Sarin* (1).

Mr. Sikri said that if there had been no partition of the country the plaintiff-company could have sought relief under the provisions of section 70 of the Indian Contract Act on grounds of unjust enrichment. But according to him, a remedy which was once available against the Government of United Punjab, is no longer competent against the Province of East Punjab. According to him, the provisions of Indian Independence (Rights, Property and Liabilities) Order, 1947, cannot be utilised by the plaintiff-company. This Order, dated 14th August, 1947, was made by the

(1) I.L.R. (1930 11 Lahore 375 (378).

Governor-General in exercise of the powers conferred by section 9 of the Indian Independence Act, 1947. Clause 8(3) of this order provides :—

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“Any contract made on behalf of the Province of the Punjab before the appointed day shall, as from that day,—

- (a) if the contract is for purposes which as from that day are exclusively purposes of the Province of East Punjab, be deemed to have been made on behalf of that Province instead of the Province of the Punjab; and
- (b) in any other case be deemed to have been made on behalf of the Province of West Punjab instead of the Province of the Punjab ;

and all rights and liabilities which have accrued or may accrue under any such contract shall, to the extent to which they would have been rights, or liabilities of the Province of the Punjab, be rights or liabilities of the Province of East Punjab or the Province of West Punjab, as the case may be.”

Mr. Sikri has firstly urged that the transaction in question was not a ‘contract’ made on behalf of the Province of the Punjab; and secondly, even if it be a ‘contract’ it cannot be deemed to have been made, as from the appointed day, for *exclusive purposes* of the Province of East Punjab. Adverting to the first argument, I have already expressed the view that the transaction was a ‘contract’ between the plaintiff-company and the Government and I have also given my reasons for that

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view. Alternatively, the liability under section 70 is *ex contractu*. It is not material, that at the time, the contract to supply maize was made, the Government did not stand to benefit by it. The law in order to impose a contractual obligation does not look to the benefit of the promiser as a sufficient consideration if in consequence of the promise there is detriment to the promisee. If the promisee, and in this case the plaintiff-company, parts with something of value at the request of the promiser, that is the Government, it is immaterial whether the promiser receives anything. The consideration given by the promisee for a promise need not move to the promiser, but may move to anyone requested by him. The commonest illustration of consideration moving to a person other than the promiser is a contract for a guaranty.

It is true that the word 'contract' in its popular sense is restricted to agreements assented to by the contracting parties. But in law, the term has a more extended meaning including quasi or implied contract arising by operation of law. A contract created by law, is enforced, regardless of the assent of the parties as it rests on a legal fiction, and not on actual consent. Such are contracts, which the law implies, because they are dictated by reason and justice, though at the time of formation, they are not consensual; but the remedy which is afforded to an aggrieved party is contractual both in character and consequences. Even if it is not agreed between the parties that the defendant is to return the money advanced, as equity and good conscience requires him to do so, the law implies a promise on the defendant's part; and the legal relationship is described variously as 'constructive contract', 'contract implied by

law', or 'quasi contract'. Chapter 5 of the Contract Act which treats of certain relations resembling those created by contract deals with this class. In my view, the term 'contract', occurring in clause 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, includes not only the agreements intentionally brought about by the contracting parties, but also constructive contracts, which the law implies as *quasi* contractual obligations; and which have nowhere else been dealt with in this order. It cannot be presumed that while referring to contracts, the order intended to exclude *quasi* contracts which were equally recognised by the Indian Contract Act, and expressly protected by contractual remedies.

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I may now examine the next argument advanced on behalf of the State, namely, that the contract could not be deemed to have been made as from the appointed day for exclusive purposes of the Province of East Punjab. This contract when entered into was for the supply of maize lying partly in Lyallpur (now in Pakistan) and partly in Hoshiarpur. Before the appointed day, the plaintiff-company had been given delivery of the entire quantity of maize from Lyallpur. The quantity which remained to be supplied, at the appointed day, was in Hoshiarpur. Out of this quantity also, a portion of the maize had been taken delivery of by the plaintiff-company. The question, therefore, is whether the contract to supply the remaining maize from Hoshiarpur was for exclusive purposes of the Province of East Punjab. Had it been entered into on 15th August, 1947, the maize which was lying at Hoshiarpur on that day was under the exclusive control of the Province of East Punjab and it cannot be said of such a contract, that it had been entered into for the exclusive purposes of the

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Province of West Punjab. A contract made in respect of property, within the plenary control of the Government of East Punjab could never be deemed to be for the exclusive purposes of the Province of West Punjab. The answer to the question as to exclusive purposes of the one State, or the other, must depend upon the place where the particular property, the subject-matter of the contract was lying on and after the appointed day. This was the test applied by Chagla, C.J., in *Union of India v. Chinubhai* (1), which has been accepted by the Supreme Court and by other High Courts. In *Union of India v. Messrs Chaman Lal and Co.* (2), the contract was to supply fodder to the Manager, Military Farms, Lahore. Applying the test laid down by Chagla, C.J., it was held that as the supply of fodder was to be made to the Lahore farm, it was clearly a purpose exclusively of the dominion of Pakistan.

Reference may be also made to *Messrs. Chaman Lal Loona and Company v. Dominion of India* (3), *East Punjab Province v. Shri Mahant Bashambar Das, etc.* (4), *Union of India v. Firm Balwant Singh* (5), *Union of India v. Messrs Chaman Lal Loona and Co.* (6), *Elahi Bux v. Union of India* (7), and *Krishna Ranjan v. Union of India* (8), and to two unreported decisions of this Court in *Messrs Amin Chand Bholu Nath v. Union of India*, R.F.A. No. 104 of 1951, and in *Union of India v. The Ludhiana Foodgrain Pucca Arhtia Association Ltd.*, R.F.A. No. 283 of 1951, where the same test was applied.

On the basis of the reasoning of these authorities the purpose of the contract as on 15th August,

- (1) A.I.R. 1953 Bom. 13.
- (2) A.I.R. 1957 S.C. 652.
- (3) I.L.R. 1953 Punj. 233.
- (4) I.L.R. 1955 Punj. 693.
- (5) I.L.R. 1956 Punj. 1129 (F.B.).
- (6) I.L.R. 1957 Punj. 1701.
- (7) A.I.R. 1952 Cal. 471.
- (8) A.I.R. 1954 Cal. 623.



1947, was to supply maize at Hoshiarpur, and therefore, it was the exclusive purpose of the Province of East Punjab.

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I may also dispose of another argument of the Advocate-General in this connection, namely, that the purpose could not be that of the Province of East Punjab because maize was to be supplied to Kapurthala which was then a separate State and not a part of the East Punjab. This argument omits an essential fact that the contract was to supply the maize 'F.O.R. Station of despatch', which was no other than Hoshiarpur.

It was also argued on behalf of the State, that the responsibility was joint of the two Provinces of the West Punjab and East Punjab, as the transaction was in respect of the maize which was to be supplied from out of the stock lying at Lyallpur in West Punjab and in Hoshiarpur in East Punjab. It was, therefore, contended that the contract could not be deemed to be for exclusive purposes of the Province of East Punjab. Before the partition of the country the maize lying at Hoshiarpur, and allotted to the plaintiff-company, had been taken delivery of. On 15th of August, 1947, the only maize, the delivery of which remained to be taken was at Hoshiarpur. The subject-matter of the contract at the time it was entered into was in two divisible portions, but with effect from 15th of August, 1947, which is the crucial date, the exclusive purpose of the unexecuted part of the contract was that of the Province of East Punjab where the maize was stocked. The contract with regard to the 640 tons of maize lying in Lyallpur and Hoshiarpur was entire, in the sense, that there was only one agreement governing supply of maize from two places, but though entire, it was nevertheless divisible.

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One divisible part of this contract had been performed, and what was left of the contract as on 15th of August, 1947, related to the performance of the other divisible part; and with regard to the latter part, the liability for performance could not be joint of the two Provinces. The maize, the price of which, was fixed per maund was susceptible of division and apportionment.

The test of indivisibility or severability of a contract would depend on whether the quantities to be supplied from different places were so interdependent, that the parties would not have accepted the supply from one place to the exclusion of the other. Another test is, whether the contract could be completed in part only and the recovery had therefor. The nature of this transaction shows that the contract was severable, and the consideration was apportionable, and this is, how it had been construed by the parties.

Mr. Sikri also argued, that this case was covered either by clause 9(c) or by clause 10(1) or 10(3)(c) of the Indian Independence (Rights, Property and Liabilities) Order, 1947. Clause 9(c) runs as under :—

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

(a) \* \* \*

(b) \* \* \*

(c) in the case of liabilities of the Province of the Punjab, be liabilities of the Province of West Punjab;

\* \*

It is then said, that this is a case of 'financial obligation'. The expression 'financial obligation' is not defined anywhere. The word 'finance' has been used interchangeably with revenue. In its broad sense, it might include supply of goods, but in this context, it more appropriately refers to revenues of a State especially when juxtaposed with 'loans and guarantees'. The interpretation of the expression, 'other financial obligations', occurring in clause 9 of this Order, came up for examination before the Supreme Court in *State of West Bengal v. Shaikh Serajuddin Batley* (1), and Das J., as he then was, said—

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“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 meant, it would seem, the special kinds of contracts relating to the 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

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whether a particular obligation which may be the subject-matter of discussion falls within the expression 'financial obligations' within the meaning of article 9".

In *Province of West Bengal v. Midnapur Zamin-dary Co., Ltd.* (1), Harries C. J. observed—

"It is contended that his clause will cover contractual obligations and will cover liabilities for rent such as exist in this case. The obligation to pay rent is in one sense a financial obligation, but I think it is clear that the words 'and other financial obligations of a Province' in Art. 9 must be construed *ejusdem generis* with the words 'loans and guarantees'. What this clause covers are loans, guarantees and other obligations of a like nature. Clearly, it was not intended to cover purely contractual obligations; otherwise Art. 8 becomes wholly worthless.

\* \* \*

The term 'financial obligation' used in Article 9 must be given a restricted meaning. The obligation must be of a nature similar to the obligations which are set out previously in that section."

Similarly in *Sree Iswar Madan Gopal Jiu v. Province of West Bengal* (2), Chunder, J., stated—

"The word 'financial' in 'financial obligation' has got to be given its technical meaning which it has in connection with matters of revenue and it cannot be given the wide meaning as equivalent to any kind of pecuniary liability".

(1) 54 C.W.N. 677 (680).  
(2) 53 C.W.N. 809.

Clause 9, therefore, does not apply to this case; also for the reason that the liability to supply the maize could never be treated as the State's 'financial obligation'.

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Lastly, it was urged, that the parties' case was also covered by clause 10(3) (a) or in any case by clause 10(3) (c). Clause 10(3) reads as under:—

“10(3) Where immediately before the appointed day the Province of the Punjab is subject to any such liability as aforesaid, that liability shall—

- (a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of West Punjab, be a liability of that Province :
- (b) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of East Punjab be a liability of that Province; and
- (c) in any other case, be a joint liability of the Provinces of East and West Punjab”.

The words “any such liability as aforesaid”, referred to “an actionable wrong other than breach of contract”. The argument that the term “actionable wrong” is very wide and includes all cases other than breach of contract has not appealed to me. I have already said, that the constructive contracts in strict sense, are not true contracts, because of the absence of the element of consent, but by fiction of law they are regarded as contracts and admit of contractual remedies on

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the analogy of contracts in which there is mutual assent.

Mr. Sikri then said, that as in this case, the contract was entered into at Lahore, therefore, the cause of action arose wholly within the territory of West Punjab and is, therefore, the liability of that Province. In the alternative he contended that it was a case of joint liability of the two Provinces. The cause of action in this case arose on 3rd January, 1948, at Hoshiarpur, when the allocation was cancelled, and the supply of the maize which was to be made at Hoshiarpur, was refused. This is a suit for recovery of Rs. 60,172-15-9 besides damages and interest—representing the price of the maize stocked at Hoshiarpur, and which was undertaken to be supplied, but delivery of which was refused. This is a case which falls within 10(3)(b) as the cause of action arose wholly “within the territory of East Punjab”. I am, therefore, left in no doubt, that the cause of action arose wholly within the territory of East Punjab, and it is not a case of a joint liability of the two Provinces.

For the reasons discussed above the contention of the plaintiff-company deserves to prevail, so far as its claim for Rs. 60,172-15-9 is concerned. This is the value of 6,288 maunds of maize at Hoshiarpur. The plaintiff-company has also claimed Rs. 50,000 on account of damages and Rs. 17,080 on account of interest at 6 per cent on the two amounts making a total of Rs. 1,27,253-15-9. The plaintiff cannot claim both damages and interest.

P.W.I., Shri Raja Ram, stated that in the first notice given by the plaintiff-company through their counsel R. S. Karam Das, Advocate, no

damages had been claimed. There is no convincing evidence that plaintiff-company had suffered the damages claimed in this suit and this item of the claim has rightly not been pressed before us. In view of the provisions of section 61 of the Indian Sale of Goods Act the plaintiff-company is entitled to interest on the balance of Rs. 60,172-15-9 at the rate of 6 per cent as also found by the trial Court. I am, therefore, of the view that the appeal deserves to succeed and the plaintiff-company is entitled to a decree against defendant No. 2, the Punjab State, for recovery of Rs. 60,172-15-9 with interest at 6 per cent on this amount from 3rd of January, 1948 till realisation.

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#### BY COURT

In view of the conflicting conclusions reached by us this case may be put up before a third Judge to be nominated by the Honourable the Chief Justice.

DULAT, J.—This first appeal arises out of a suit brought by Sukhjit Starch and Chemicals Limited, Phagwara, against the Union of India and the Punjab State for the recovery of a sum of Rs. 1,27,253 and interest at the rate of six per cent per annum, made up mainly of two items—(1) Rs. 60,172-15-9, which the plaintiff had paid to the Government of the United Punjab before partition in June, 1947, and (2) Rs. 50,000, being the amount of damages claimed by the plaintiff for the non-performance of an alleged contract of sale in respect of which the first amount of Rs. 60,172-15-9 was paid. The suit was dismissed with costs by the trial Court on the view that there was in law no contract between the plaintiff and either defendant, and that neither defendant was liable to the plaintiff. The appeal, in the first instance, came up before a Division Bench

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consisting of Tek Chand and Shamsheer Bahadur, JJ., and as they differed as to the fate of the appeal, the matter has been referred to me.

The facts are simple and not in dispute. The plaintiff-company is engaged in the manufacture of starch, and, among other things, maize is used for such manufacture. During the year 1947 maize was one of the commodities, the distribution and disposal of which was controlled under the Essential Supplies (Temporary Powers) Act, 1946, and various authorities had been set up for this purpose under the Act or under orders made under the Act, and a procedure for the sale and distribution of controlled commodities like maize had been evolved. Towards the close of April, 1947, it was found that some quantity of maize imported from Argentine was not fit for human consumption, but could be used for the manufacture of starch. The Textile Commissioner at Bombay wrote to the plaintiff-company, enquiring if they were interested in the purchase of some maize, and, on their reply in the affirmative, a direction was made allotting 640 tons of maize to the plaintiff-company at the rate of Rs. 8 per maund. The maize was apparently lying at places in two districts of the Punjab, as it then was, namely, Lyallpur and Hoshiarpur, and the plaintiff-company was directed to contact the Director of Food Purchases, Lahore. That officer asked the plaintiff-company to deposit a sum of Rs. 1,45,000 in a Bank, and the plaintiff-company actually deposited this sum of money in the United Commercial Bank Limited, Lahore. Permits were then issued to the plaintiff-company for the purchase of maize from the two centres already mentioned, and in fact the plaintiff-company succeeded in obtaining the entire quantity of maize available in Lyallpur, but, out of the quota lying in the Hoshiarpur District, the company could obtain only a small portion. The merchants or dealers,



who parted with maize to the plaintiff, were from time to time paid from out of the money deposited by the plaintiff-company with Government. Immediately before the partition, a sum of Rs. 60,172-15-9 was still lying to the credit of the plaintiff-company for which they hoped to obtain maize from the Hoshiarpur District. That, however, did not happen, for after the partition it was found that the Pakistan Government would not permit the money lying in the Bank at Lahore to be transferred to India, and, of course, without payment of the price the stockholders in the Hoshiarpur District declined to deliver the maize to the plaintiff-company, and later on the East Punjab Government changed its policy and declined to allot any more maize to the plaintiff. Hence the plaintiff's claim for the refund of the money which, they said, they had paid to Government, and for damages for the breach of what the plaintiff described as a contract of sale. The claim for damages is no longer seriously pressed, and the only question is whether the plaintiff-company, not having received anything against the sum of Rs. 60,172-15-9 is not entitled to a refund, and whether the liability for making the refund rests on either the Punjab Government or the Union of India.

It was argued before the Division Bench and also before me that there was a contract of sale made between the plaintiff-company and the two defendants, or, at any rate, one of them, and, if the contract was not performed in accordance with its terms, the plaintiff is entitled to the refund of the price of the goods concerned in the sale. It was further contended, as is also contended before me, that the liability for the refund is either of the East Punjab Government or the Union of India, whether it be because there was a contract between the parties which was broken, or

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whether it be that the Punjab Government had received the money from the plaintiff and is to return it in accordance with section 70 of the Indian Contract Act, which liability, according to the plaintiff, falls on the East Punjab Government. On the first contention, Tek Chand, J., was satisfied that there was a completed contract for the sale of 640 tons of maize to the plaintiff, and in the alternative, that the plaintiff was entitled to a refund of the money under the terms of section 70 of the Contract Act, and the liability for the refund was of the East Punjab State. Shamsheer Bahadur, J., however, found that there was no contract of sale between the parties, and that Government was in connection with the transaction in question not selling any maize to the plaintiff, but merely directing the allocation of certain quantity of maize to be sold ultimately by the merchants, who owned the maize, and no claim, therefore, on the basis of a sale-contract could be founded. Regarding the refund of money otherwise than on the contract, he held that the liability arose out of an actionable wrong and was, therefore, the joint liability of the East Punjab (India) and West Punjab (Pakistan), and the suit therefore, against the East Punjab or the Union of India did not lie. The result was that Shamsheer Bahadur, J., held that the appeal should be dismissed without any order as to costs, while Tek Chand, J., held that the suit should be decreed in the plaintiff's favour and against the Punjab State for Rs. 60,172-15-9 along with interest at the rate of six per cent per annum from the 3rd January, 1948 till realization.

The argument to prove a contract in this case proceeds on the assumption that the maize to be sold to the plaintiff belonged to Government, and it is said, therefore, that the Director of Food

Purchases, Punjab, offered to sell maize to the plaintiff, which offer was accepted and the sale-price paid in advance, and there came into being a full-fledged contract. The fact, however, is that the maize in question never belonged to Government although, of course, it was to be sold to the plaintiff at the instance of the Director. The argument overlooks the fact that the Director was concerned with the performance of his statutory duties concerning the distribution and disposal of maize, and the transaction between him and the plaintiff was not a business transaction in the ordinary sense. It is, to my mind, wrong to think even that the Director had full power of disposal over the maize in question in the manner an ordinary owner of goods has such power. The Director was, on the other hand, bound by what the Essential Supplies (Temporary Powers) Act demanded, so that, although the Director had the power of allocating certain quantities of maize in a certain manner, he was always free to alter the same allocation and, in fact, bound to do so if changed circumstances required such allocation to be altered. The transaction, therefore, as between the Director and the plaintiff has no resemblance to an ordinary transaction of sale by the owner of goods to another. The maize in dispute absolutely belonged to certain stockholders, called in this case the Nagrota Syndicate, and, although in exercise of his statutory powers the Director could, as he did, direct that syndicate to dispose of the maize in a certain manner, he was equally competent to reverse his decision, and it is not, in my opinion, possible to say that he was selling maize when he agreed to make an allocation in the plaintiff's favour, or that he was refusing to sell maize when he changed that decision. On the facts, therefore, I am in agreement with the conclusion arrived at by Shamsher

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Bahadur, J., that there was in this case no contract of sale concerning maize and no question can, in the circumstances, arise of the breach of any contract.

This, however, does not dispose of the plaintiff's claim, for, as I have already mentioned, the claim now simply is that the plaintiff paid to the Punjab Government a certain sum of money which was not used for the purpose for which it was paid, but was retained by Government, and the money is returnable to the plaintiff under section 70 of the Contract Act. Mr. Sikri did not seriously suggest that, having received the money from the plaintiff, the Punjab Government was not bound to return it or make adequate compensation, and, in view of the language of section 70 of the Contract Act, such a claim would be wholly untenable. That section says—

“70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

Apart from the fact of partition, it is admitted that the Government of United Punjab was bound to return to the plaintiff the sum still lying unspent with Government, the amount admittedly being Rs. 60,172-15-9. The dispute, however, is whether the liability for returning the money became, on partition, the liability of East Punjab (India) or of West Punjab (Pakistan). This has to be gathered from the terms of the Indian Independence (Rights, Property and Liabilities) Order, 1947, which lays down the rules according to which liabilities were divided. Article 8 of that order provided for the division of liabilities

arising out of a contract. Article 9 provided for liabilities in respect of loans, guarantees and other financial obligations, and Article 10 provided for the division of liabilities in respect of actionable wrongs other than breaches of contract. Shamsheer Bahadur, J., is of the view that the liability here concerns an actionable wrong other than a contract and therefore, governed by Article 10, while Tek Chand, J., thinks that this is a liability under a contract even if section 70 of the Contract Act is to govern the matter, for the transaction closely resembles a contract. To me it appears that on either view the result really is the same. Assuming that the transaction in connection with which the money was paid by the plaintiff, so closely resembles a contract that liability under it must be divided in accordance with Article 8 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, it is clear that what has to be ascertained is whether such a transaction, if made after the partition, would have been made with the East Punjab Government (India) or the West Punjab Government (Pakistan), and the answer in my opinion must be that the transaction, if made after the partition, would have been made with the East Punjab Government, as the maize to be sold was lying in East Punjab. The liability to refund the money, therefore, must be that of East Punjab. This was the test mentioned by Chagla, C.J., in *Union of India v. Chinubhai* (1), and the language of Article 8(3)(a) of the Indian Independence (Rights, Property and Liabilities) Order, 1947, supports that view. It says—

- “8(3) Any contract made on behalf of the Province of the Punjab before the appointed day shall, as from that day,—
- (a) if the contract is for purposes which as from that day are exclusively purposes

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of the province of East Punjab, be deemed to have been made on behalf of that Province instead of the Province of the Punjab.”

I am not pursuing this matter further as there seems to me force in the contention that Article 8 only concerns liabilities arising out of a legal contract which, in my opinion, did not come into being in the present case and liabilities in respect of actionable wrongs other than breaches of contract are governed by Article 10. The relevant portion of this Article, being 10(3), runs thus—

“10(3) Where immediately before the appointed day the Province of the Punjab is subject to any such liability as aforesaid that liability shall,—

- (a) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of West Punjab, be a liability of that Province;
- (b) where the cause of action arose wholly within the territories which, as from that day, are the territories of the Province of East Punjab, be a liability of that Province; and
- (c) in any other case be a joint liability of the Provinces of East and West Punjab”.

It is admitted on behalf of the defendants that the cause of action in this case arose partly in East Punjab and partly in West Punjab, and the liability was, therefore, joint of the two Provinces. That has been the conclusion of Shamsheer Bahadur, J., also, and I am in agreement with that conclusion. It

was suggested in the course of arguments at one stage that the plaintiff-company being situated at a place outside the Province of East Punjab, as it then was, it should be held that the maize to be delivered to the plaintiff was to be delivered at a place outside East Punjab. There is, however, no foundation for this, for the transaction clearly contemplated that maize was to be delivered to the plaintiff at the place where it was lying, that is, in the Hoshiarpur District, and, apart from that, the breakdown of the entire transaction took place in East Punjab when the State Government refused to compel the Nagrota Syndicate to part with maize. On the facts, therefore, there is no doubt that the cause of action partly arose in East Punjab and partly in West Punjab. It follows that the East Punjab became liable jointly with the West Punjab to return the money in question to the plaintiff. Mr. Sikri contended that in such a case, that is, if the liability was joint of the two Provinces, the plaintiff cannot compel the East Punjab alone to refund the money, the argument being that joint liability is not necessarily several also. I am unable to see any force in this contention. Section 43 of the Indian Contract Act, on which both parties rely, provides about this matter thus—

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“43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise”,

and among the illustrations under this section occurs the following :—

“(a) A., B., and C. jointly promise to pay D. 3,000 rupees. D. may compel either A. or B. or C. to pay him 3,000 rupees.”

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It seems to follow that, if under the Indian Independence (Rights, Property and Liabilities) Order, 1947, the liability to refund the money was joint of the two Provinces of East and West Punjab, then both the Provinces must be deemed to have jointly promised to pay back the money to the plaintiff, and the plaintiff can compel either of them to refund the money. It was said that the plaintiff was bound to join the West Punjab Province in the suit, and, as he failed to do so, the suit is incompetent. I do not at all see what need there was for the plaintiff to join the West Punjab Province in the suit, as he was merely seeking to enforce his rights against one of the joint promisors and not seeking any relief against the other. It is, therefore, impossible to non-suit the plaintiff for not joining the West Punjab in the suit. I would, therefore, hold that in accordance with Article 10 of the Indian Independence (Rights, Property and Liabilities) Order, 1947, the present State of Punjab, being the successor to the Province of East Punjab, is liable to refund the plaintiff's money to him. There is, of course, no dispute about the amount.

The plaintiff claims interest on the amount, and Tek Chand, J., has been disposed to allow interest at the rate of six per cent per annum mainly because of section 61 of the Indian Sale of Goods Act. Since, however, I have held that there was no sale as such in this case, the claim for interest is not, in my opinion, well-founded. There was certainly no agreement to pay interest, and the circumstances otherwise do not justify the award of interest.

In the result, therefore, I would, in substantial agreement with Tek Chand, J., allow this



appeal and grant the plaintiff a decree for Rs. 60,172-15-9 against the second defendant, namely, the State of Punjab.

About costs, I gather from the judgments that the learned Judges of the Division Bench were agreed that there should be no order as to costs, and whatever, therefore, my own view might be about this matter, I am not called upon to decide it.

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APPELLATE CIVIL

Before Inder Dev Dua and Prem Chand Pandit, JJ.

JAL KAUR,—Appellant

versus

PALA SINGH,—Respondent

Regular First Appeal No. 258 of 1958

*Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 19—Right of widowed daughter-in-law to get maintenance from the ancestral property of her husband—Such ancestral property, whether can be burdened with the maintenance of other members of the family of father-in-law in the presence of his self-acquired property—Proviso (a) to section 19—Widowed daughter-in-law being maintained by her parents—Whether can claim maintenance from her father-in-law—Indian Limitation Act (IX of 1908)—Article 170—Whether applicable to appeal as a pauper.*

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*Held*, that no doubt the widowed daughter-in-law can only look to the ancestral property for her maintenance but it is nowhere laid down that the income from the ancestral property must also be burdened with the maintenance of other members of the family of the father-in-law for whose maintenance self-acquired property is available.

*Held*, that in order to disentitle a Hindu widow of her right to claim maintenance from her father-in-law as provided in section 19(1) of the Hindu Adoption and Maintenance Act, it must be established affirmatively that she is