foreign judgment. (4) Clause 3 of art. 4 is in the nature of a deeming clause and makes the decree of the Pakistan court (West Punjab) a decree of a court of competent jurisdiction in East Punjab (India). (5) Situs of the decree is not in Pakistan alone but the legal fiction applies to that also, and (6) the evacuee laws of Pakistan do not affect the effectiveness of the decree in India.

I would therefore allow this appeal and set aside the judgment and order of the High Court. The appellants will have their costs throughout.

BY COURT: In view of the majority Judgment, the appeal is dismissed with costs.

Appeal dismissed.

M/s. UNIVERSAL IMPORTS AGENCY AND ANOTHER

v.

THE CHIEF CONTROLLER OF IMPORTS AND EXPORTS AND OTHERS.

(AND CONNECTED PETITIONS)

(B. P. SINHA, C. J., JAFAR IMAM, A. K. SARKAR, K. SUBBA RAO and J. C. SHAH, JJ.)

French Establishments—Agreement to import goods—De facto transfer of administration to India—Confiscation of goods imported—Validity—" Things done or omitted to be done", meaning of—French Establishments' (Application of Laws) Order, 1954, cl. (6)—Sea Customs Act, 1878 (8 of 1878), s. 167(8).

In pursuance of an agreement dated October 21, 1954, entered into between the Government of India and the Government of France whereby there was a de facto transfer of the administration of Pondicherry and other French Settlements to the Government of India as and from November 1, 1954, a notification dated October 30, 1954, was issued by the Government of India called the French Establishments' (Application of Laws) Order, 1954, by virtue of which certain enactments specified in column (3) of the Schedule which included the Sea Customs Act,

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

1878, the Imports & Exports Trade (Control) Act, 1947, and the Foreign Exchange Regulation Act, 1947, were extended to Pondicherry. Paragraph 6 of the Order provided: "Unless otherwise specifically provided in the Schedule, all laws in force in French Establishments immediately before the commencement of the Order, which correspond to enactments specified in the Schedule, shall cease to have effect, save as respect things done or omitted to be done before such commencement".

Shortly prior to the transfer of the administration of Pondicherry to India, the petitioners had entered into certain agreements with foreign suppliers for the import into Pondicherry of diverse goods. Pondicherry was, prior to the transfer to India, a free port without any restrictions on imports, except on a few items, and the importers could acquire foreign exchange either at the official rate in respect of some transactions or at the open market in respect of others. The petitioners had with the consent of the French authorities obtained through the banks foreign exchange from the open market to finance their imports and had, with the foreign exchange so acquired, opened irrevocable letters of credit in favour of their foreign suppliers on account of the price of the goods to be supplied. On or about November 1, 1954, the goods covered by the aforesaid imports were in different stages of shipment and arrived at the port of Pondicherry in January and February 1955. The Collector of Customs treated the imports of the goods as unauthorised and confiscated the same and gave the petitioners an option to pay in lieu of confiscation a penalty, on the ground that the petitioners had not obtained a licence for bringing the goods into Pondicherry and that s. 167(8) of the Sea Customs Act, 1878, was contravened. The petitioners claimed, inter alia, that the transactions entered into by them with the foreign dealers were "things done" within the meaning of para. 6 of the French Establishments' (Application of Laws) Order, 1954, and that therefore the imports by the petitioners were within the saving clause of that paragraph.

Held, (*Per* Sinha, C. J., Imam and Subba Rao, JJ. Sarkar and Shah, JJ., *dissenting*): (1) that on its proper interpretation, the expression "things done" in para. 6 of the French Establishments' (Application of Laws) Order, 1954, was comprehensive enough to take in not only things done but also the effects or the legal consequences flowing therefrom;

The Queen v. *Justices of the West Riding of Yorkshire*, (1876) 1 Q.B.D. 220 and *Heston and Isleworth Urban District Council* v. *Grout*, [1897] 2 Ch. 306, relied on.

(2) that the bringing of the goods into India and the relevant contracts entered into by the petitioners with the foreign dealers formed parts of a same transaction, and therefore, the imports were the effect or the legal consequence of the "things done", i.e., the contracts entered into by the petitioner;

State of Travancore-Cochin v. *The Bombay Co. Ltd.*, [1952] S.C.R. 1112 and *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory*, [1954] S.C.R. 53, relied on.

(3) that para. 6 of the order saved the transactions entered into by the petitioners and that, therefore, the Collector of Customs had no right to confiscate their goods on the ground that they were imported without a licence.

Per Sarkar, J.—(1) The mere making of the contracts and the opening of the letters of credit without the bringing of the goods into Pondicherry would not amount to an "import" and, therefore, the imports by the petitioners would not be within the saving clause in para. 6 as things done before the commencement of the Application of Laws Order. (2) In the absence of the necessary words to extend the application of French laws to the effect of things done or rights acquired from the doing of them, the saving clause in para. 6 could not protect the imports made by the petitioners from the operation of the Indian laws applied to the French Establishments.

Per Shah, J.—(1) Steps preliminary to import, even if they are closely integrated therewith, are not included in the concept of import, in dealing with the provisions of the Sea Customs Act and the Imports and Exports Trade (Control) Act. (2) By the use of the expression "things done or omitted to be done before such commencement" in cl. 6 of the French Establishments' (Application of Laws) Order, 1954, French law applies to acts and omissions before November 1, 1954, and not to legal consequences of those acts and omissions ensuing after that date, and hence import of goods across the customs frontier in the Pondicherry Port after November 1, 1954, without a licence in that behalf is contrary to the provisions of the Sea Customs Act and the Import and Exports Trade (Control) Act.

ORIGINAL JURISDICTION: Petitions Nos. 123 to 125 of 1957 and 118 of 1959.

Petitions under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

N. C. Chatterjee and *S. C. Mazumdar*, for the petitioners (In Petns. Nos. 123 to 125 of 1957).

A. V. Viswanatha Sastri, *R. Ganapathy Iyer* and *G. Gopalakrishnan*, for the petitioners (In Petn. No. 118 of 1959).

H. J. Umrigar, *B. R. L. Iyengar* and *T. M. Sen*, for the Respondents (In all the petitions).

Harnam Singh and *Sadhu Singh*, for Intervener No. 1 (B. S. and Co.)

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

D. R. Prem and *Sadhu Singh*, for Intervener No. 2 (French India Importing Corporation).

1960. August 23. The Judgment of B. P. Sinha, C. J., Imam and Subba Rao, JJ., was delivered by Subba Rao, J. Sarkar, J. and Shah, J., delivered separate Judgments.

SUBBA RAO J.—These four petitions are filed under Art. 32 of the Constitution for quashing the orders of the Assistant Controller of Imports and Exports. the Collector of Customs and Central Excise, Pondicherry, the Board of Revenue, and the Government of India, and for an appropriate direction requiring the respondents to refund the amount realised from the petitioners.

Messrs. Universal Imports Agency and the proprietor of the agency are the petitioners in the first three petitions and Messrs. Victory Traders are the petitioners in the last one. The Chief Controller of Imports and Exports, Pondicherry, the Collector of Customs and Central Excise, Pondicherry, the Central Board of Revenue and the Government of India are the respondents in all the petitions.

Messrs. French India Importing Corporation and Messrs. B. S. & Co. intervened in the Writ Petitions.

Pondicherry was a French Possession in India. On October 21, 1954, the Government of India and the Government of France entered into an agreement (hereinafter called the Indo-French Agreement), whereunder there was a *de facto* transfer of the administration of the French Settlements to the Government of India (hereinafter called the merger) as and from November 1, 1954. The *de jure* transfer was postponed.

Messrs. Universal Imports Agency are a proprietary concern registered with the Services Des Contribution, Pondicherry, having its principal place of business at Pondicherry. Sri Mohanlal B. Gandhi is the proprietor of the said Agency. They are established importers and general merchants dealing in ball bearings, mill stores, porcelain ware, glass marbles, beltings and various other goods. They commenced their business at Pondicherry on or about April 14, 1954, under

"patente" No. 70 of 1954 issued by the Controller of the Contributions Department of the French Government at Pondicherry. In the middle of August 1954, they placed 8 indents with Messrs. Shimada Trading Co., Ltd., Osaka, Japan, for importing porcelain wares, glass marbles and beltings and the total value thereof amounted to Rs. 57,418-12-0. About the end of August 1954, they opened three irrevocable Letters of Credit with Messrs. Banque De L' Indo-Chine in favour of the said suppliers. The bankers obtained authorization from the Bureau Des Affaires Economique, Pondicherry, for the requisite foreign exchange from the open market and sold the same to the petitioners for the amount involved in the Letters of Credit. The petitioners made full payment for the said foreign exchange and the said Bank kept the said foreign exchange and credit irrevocably available with their Overseas Agent at Japan for the benefit of the suppliers against full set of shipping documents. All the said Letters of Credit were valid for three months and under the agreement the suppliers were to ship the goods within the said time. On or about November 1, 1954, the said goods were in different stages of shipment; in some cases they were in the course of shipment, and in others awaiting shipment in a matter of a few days and indeed a large part of the goods had already been placed on board "S. S. Shillong" and "S. S. Cambodge" and the balance of the goods were in the course of being loaded in "S. S. Sunda". In January and February, 1955 and thereafter the goods arrived at the Port of Pondicherry. The Collector of Customs confiscated all the goods on the ground that they were imported without a licence and gave an option to the petitioners to pay in lieu of confiscation fine amounting to Rs. 30,390/-. The petitioners took up the matter with the Government of India without any success and finally they paid the said penalty under protest and cleared the goods.

On or about September 1954 the petitioners placed several indents with their overseas suppliers, Messrs. Shimada Trading Co., Limited, Osaka, Japan, and others and the total C. I. F. value thereof amounted

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

to Rs. 40,470-14-0. They arranged for the full payment of eight cheques to the said suppliers of the value of the goods through the Banque De L' Indo-Chine. Their bankers duly obtained authorization from the Bureau Des Affairs Economique, Pondicherry, for the requisite foreign exchange and sold the same to the petitioners for the amount involved in the cheques, and the said foreign exchange was kept available to the suppliers. On or about November 1, 1954, the goods ordered were in different stages of shipment and in some cases the goods were in the course of shipment and in others awaiting shipment in a matter of a few days. In January and February, 1955, the goods arrived at the port of Pondicherry. The Collector of Customs treated the imports of the goods as unauthorized and confiscated the same and gave the petitioners an option to pay in lieu of confiscation a penalty amounting to Rs. 20,700/-. The petitioners carried the matter to the Government without any success. Ultimately the petitioners paid the penalty under protest and cleared the goods.

The petitioners again in the middle of August 1954 placed several indents with their overseas suppliers for importing hair belting, torches, belt fasteners, electric lighting torch bulbs and primus stoves, and the total C. I. F. value was Rs. 52,572-12-0. They opened irrevocable Letters of Credit and issued cheques against full advance remittance in favour of their suppliers through the said Banque De L' Indo-Chine. Their bankers arranged through the Bureau Des Affairs Economique, Pondicherry, for the requisite foreign exchange from the open market and sold the same to the petitioners for the amount involved in the said Letters of Credit and cheques. The petitioners made full payment for the said foreign exchange and the said bank kept the said foreign exchange and the Letters of Credit irrevocably available with their overseas agents for the benefit of the suppliers against full set of shipping documents and the cheques issued by the bank on overseas banks were sent to the suppliers as full advance remittance against the contracts. In January and February, 1955, the goods arrived at the

port of Pondicherry. The Collector of Customs confiscated the goods and gave the petitioners an option to pay in lieu of confiscation fine amounting to Rs. 24,210. Though the petitioners took up the matter with the Government of India, nothing came out of it. They paid the penalty under protest and cleared the goods.

Messrs. Victory Traders, the petitioners in Petition No. 118 of 1959, are carrying on business of import and export and general merchandise in Pondicherry from the year 1949. The petitioners were importing into Pondicherry a number of articles from various countries under " patente " No. 126 of 1954 granted by La Controleur, Pondicherry. On August 20, 1954, they applied to the Chief Bureau Economique, Pondicherry, requesting them to grant permits to import goods from foreign countries. The said Bureau replied that no import licence was required for goods to enter the territory. Thereafter the petitioners placed orders with foreign dealers. In the middle of August, 1954 and early in September, 1954, they placed a number of indents with their principals in foreign countries for importing fan belts, corn emery, soda water bottles, glass marbles, etc., of value £ 13,870. The orders were backed by full payments in many cases and at least half the payments in others. These payments were made by demand drafts issued by the Banque De L' Indo-Chine. In January and February, 1955 and thereafter the goods arrived at the port of Pondicherry, and they were confiscated by the Collector of Customs who gave the petitioners an option to pay in lieu of confiscation fine aggregating to Rs. 91,100. After filing appeals to the Central Board of Revenue and, thereafter, a revision to the Government of India with no success, the petitioners cleared the goods after paying the penalty under protest.

It is clear from the foregoing facts that the petitioners entered into, before the merger, firm contracts of sales by import with foreign sellers, made available foreign exchange either under Letters of Credit or otherwise, and the goods were shipped either before or after the merger, though they reached their destination

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

after the merger. The said goods were confiscated by the Collector of Customs under the following circumstances. Under the Indo-French Agreement, the entire administration of the French Settlements was vested with the Government of India from November 1, 1954, though *de jure* transfer had been postponed. In pursuance of the Indo-French Agreement, the Ministry of External Affairs published a Notification No. S. R. O. 3315 dated October 30, 1954, purporting to be under s. 4 of the Foreign Jurisdiction Act, 1947, and called the French Establishments' (Application of Laws) Order, 1954, (hereinafter referred to as the Order). Under paragraph 3 of the said Order, the Sea Customs Act, 1879, the Reserve Bank of India Act, 1934, the Imports & Exports Trade (Control) Act, 1947, the Foreign Exchange Regulation Act, 1947 and the Indian Tariff Act, 1934, were extended to Pondicherry. On November 1, 1954, the Government of India appointed a Controller of Imports & Exports for the French Establishments, and paragraph 4 of the same notification gave the following information and guidance to the public:

"As regards orders placed outside the Establishments and finalised through the grant of licence by the competent French Authorities in accordance with the Laws and Regulations in force prior to 1st November, 1954, licence-holders are advised to apply to the Controller of Imports & Exports for validation of licences held by them. No fees will be charged for these applications. The applications should be accompanied by the original licence and should give particulars about.....".

"Licence-holders are advised not to arrange for shipments of goods until the licences held by them have been validated by the Controller of Imports and Exports at Pondicherry."

The petitioners by way of abundant caution applied to the Chief Controller of Imports & Exports for licences for clearance of goods, but they were all rejected and the petitioners were told that their goods would be treated as unauthorized imports and they were advised to approach the Collector of Customs and Central Excise

for conditions regarding their release. As stated supra, after the goods arrived at the port of Pondicherry, the Collector of Customs and Central Excise made the various orders confiscating the goods and giving the petitioners option to pay penalties in lieu of confiscation. All of them paid the penalties, under protest, and cleared the goods. The appeals filed to the Central Board of Revenue were dismissed and the revisions filed against the orders of the Central Board of Revenue to the Government of India were also dismissed. The petitioners filed the petitions under Art. 32 of the Constitution questioning the validity of the orders of confiscation.

The respondents in their counter-affidavits claim that the orders made by them are valid and in accordance with law.

Learned counsel for the petitioners raised many contentions in support of their petitions. It is not necessary to enumerate them as the petitions can effectively be disposed of on the basis of one of the contentions. The said contention may briefly be stated thus: The petitioners have the fundamental right to hold and to carry on their import trade and that the Notification No. S. R. O. 3315 dated October 30, 1954, on the basis of which the orders of confiscation were issued has a saving clause which excludes the operation of the said Notification in respect of transactions whereunder the confiscated goods were purchased and imported. The said saving clause embodied in paragraph 6 of the Order reads:

"Unless otherwise specifically provided in the Schedule, all laws in force in the French Establishments immediately before the commencement of the Order, which correspond to enactments specified in the Schedule, shall cease to have effect, save as respect things done or omitted to be done before such commencement".

Relying on this paragraph, it is contended that the transactions entered into by the petitioners with the foreign dealers were "things done" within the meaning of this paragraph and, therefore, they were saved from the operation of this Order. For the respondents

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

it is argued that as the confiscated goods were brought into India after the commencement of the Order, the goods confiscated were outside the pale of the saving clause. The question raised falls to be decided on a true interpretation of the terms of paragraph 6 of the said Order.

In order to apply the said paragraph 6 to the present case, the following facts have to be ascertained: (1) What are the laws specified in the Schedule? (2) What were the laws in force in the French Establishments before the commencement of the Order corresponding to the enactments so specified? (3) What were the "things done" or omitted to be done under the said laws?

It is not necessary to enter into any elaborate survey of the laws specified in the Schedule. Broadly stated, the Imports & Exports (Trade Control) Act enables the Central Government to make an order making provisions for prohibiting, restricting or otherwise controlling the import or export of goods of any specified description. It makes the infringement of such restrictions an offence and a person contravening the same is punishable with imprisonment for a term which may extend to one year or with fine or with both. The Act further says that the goods imported in violation of the restrictions shall be deemed to be goods the import of which has been prohibited or restricted under s. 19 of the Sea Customs Act. In exercise of the powers conferred by s. 3 and s. 4A of the Imports & Exports (Trade Control) Act, the Central Government made an order dated December 7, 1955. Under s. 3 of that order, no person shall import any goods of the description specified in Schedule I, except and in accordance with a licence or a customs clearance permit granted by the Central Government or by any authority specified in Schedule 2 to that order. There are also provisions prescribing the procedure for obtaining licences, the conditions of the licences and for their cancellation or modification. It is, therefore, clear that under the said Act, no goods can be imported into India without a licence obtained in the prescribed manner from the prescribed

authorities. The Sea Customs Act provides for the levy of sea customs duty, imposes prohibitions and restrictions on imports and exports in respect of certain goods and imposes punishment for infringement of the provisions of the Act. Under s. 167(8) of the said Act, read with s. 3(2) of the Imports and Exports Trade (Control) Act, 1947, if any goods, the importation or exportation of which is prohibited or restricted, are imported into or exported out of India contrary to such restrictions or prohibitions, the goods concerned are liable to be confiscated and the persons involved are also liable to penalty. The Foreign Exchange Regulation Act, 1947, provides for the regulation of payments, dealings in foreign exchange and securities, and the import and export of currency and bullion. It prohibits dealings in foreign exchange except by persons authorized to deal in the same and it further provides penalties for contravention of any of the provisions of the Act. Briefly stated, the Indian law as disclosed by the aforesaid Acts is that imports into India without a licence are prohibited, the goods so imported in contravention of the restrictions imposed are liable to be confiscated and that foreign exchange cannot be obtained otherwise than under the provisions of the Act. Persons infringing the laws are liable to prosecution in addition to confiscation of the goods involved.

What was the pre-existing law in Pondicherry corresponding to the enactments specified in the Schedule? Neither the Acts governing the imports nor any authoritative text-books disclosing the relevant law have been placed before us. But from the affidavits filed in the case the state of law corresponding to the relevant Acts referred to in para. 3 of the Order can easily be ascertained. Pondicherry had been a free port, there being no restrictions on imports except on a few items like gold, rock-salt etc. For effecting payment for the imports, the importers of Pondicherry could acquire foreign exchange either at the official rate or at the open market rate, whichever might be conveniently available, both methods being recognised

1960

Universal Imports Agency v. *Chief Controller of Imports & Exports*

Subba Rao J.

by the French Government as valid. In the counter-affidavit filed by the State the manner of acquiring the foreign exchange for imports has been clearly stated. Two kinds of permits for obtaining official exchange by importers were issued by the Chief Commissioner in Pondicherry, which were known as authorization and attestation respectively. They were signed by the Governor-General of the French Indian Establishments himself or by his Secretary-General. The Government of France used to make an overall allotment of foreign exchange to the French territories. Apart form that allotment, it made other currency allotments in the light of trade agreements entered into by France with other countries. Authorizations were issued in respect of goods imported from countries with which France had entered into trade agreements and attestations in respect of goods imported from France and other French colonies. Further, in respect of other transactions exchange was arranged by importers through banks dealing in foreign exchange. The Department of Affaires of Economics used to authorize the banks in respect of such transactions. Shortly stated, Pondicherry was a free port without any restrictions on imports, except on a few items, and the importers could acquire foreign exchange either at the official rate in respect of some transactions or at the open market in respect of others.

What were the "things done" by the petitioners under the Pondicherry law? The petitioners in the course of their import trade, having obtained authorization for the foreign exchange through their bankers, entered into firm contracts with foreign dealers on C. I. F. terms. In some cases irrevocable Letters of Credit were opened and in others bank drafts were sent towards the contracts. Under the terms of the contracts the sellers had to ship the goods from various foreign ports and the buyers were to have physical delivery of the goods after they had crossed the customs barrier in India. Pursuant to the terms of the contracts, the sellers placed the goods on board the various ships, some before and others after the merger, and the goods arrived at Pondicherry port

after its merger with India. The prices for the goods were paid in full to the foreign sellers and the goods were taken delivery of by the buyers after examining them on arrival. Before the merger if the Customs Authorities had imposed any restrictions not authorized by law, the affected parties could have enforced the free entry of the goods in a court of law. On the said facts a short question arises whether paragraph 6 of the Order protects the petitioners. While learned counsel for the petitioners contends that "things done" take in not only things done but also their legal consequences, learned counsel for the State contends that, as the goods were not brought into India before the merger, it was not a thing done before the merger and, therefore, would be governed by the enactments specified in the Schedule. It is not necessary to consider in this case whether the concept of import not only takes in the factual bringing of goods into India, but also the entire process of import commencing from the date of the application for permission to import and ending with the crossing of the customs barrier in India. The words "things done" in paragraph 6 must be reasonably interpreted and, if so interpreted, they can mean not only things done but also the legal consequences flowing therefrom. If the interpretation suggested by the learned counsel for the respondents be accepted, the saving clause would become unnecessary. If what it saves is only the executed contracts, i.e., the contracts whereunder the goods have been imported and received by the buyer before the merger, no further protection is necessary as ordinarily no question of enforcement of the contracts under the pre-existing law would arise. The phraseology used is not an innovation but is copied from other statutory clauses. Section 6 of the General Clauses Act (X of 1897) says that unless a different intention appears, the repeal of an Act shall not affect anything duly done or suffered thereunder. So too, the Public Health Act of 1875 (38 & 39 Vict. c. 55) which repealed the Public Health Act of 1848 contained a proviso to s. 343 to the effect that the repeal "shall not affect anything duly done or suffered under the enactment

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

hereby repealed". This proviso came under judicial scrutiny in *The Queen* v. *Justices of the West Riding of Yorkshire*(1). There notice was given by a local board of health of intention to make a rate under the Public Health Act, 1848, and amending Acts. Before the notice had expired these Acts were repealed by the Public Health Act, 1875, which contained a saving of "anything duly done" under the repealed enactments, and gave power to make a similar rate upon giving a similar notice. The board, in ignorance of the repeal, made a rate purporting to be made under the repealed Acts. It was contended that as the rate was made after the repealing Act, the notice given under the repealed Act was not valid. The learned Judges held that as the notice was given before the Act, the making of the rate was also saved by the words "anything duly done" under the repealed enactments. This case illustrates the point that it is not necessary that an impugned thing in itself should have been done before the Act was repealed, but it would be enough if it was integrally connected with and was a legal consequence of a thing done before the said repeal. Under similar circumstances Lindley, L. J., in *Heston and Isleworth Urban District Council* v. *Grout*(2) confirmed the validity of the rate made pursuant to a notice issued prior to the repeal. Adverting to the saving clause, the learned Judge tersely states the principle thus at p. 313: "That to my mind preserves that notice and the effect of it". On that principle the Court of Appeal held that the rate which was the effect of the notice was good.

It is suggested that the phrascology of the saving clause of the English Statutes and of the General Clauses Act of 1897 are of wider import than that of paragraph 6 of the Order and, therefore, the English decisions are not of any assistance in considering the scope of the saving clause of the Order. It is further stated that the English decisions apply only to a saving clause of an Act which repeals another but preserves the right created by the latter. We do not see any reason why the same construction cannot be

(1) (1876) 1 Q.B.D. 220. (2) [1897] 2 Ch. 306.

placed upon the wording of paragraph 6 of the Order which is practically similar in terms as those found in the relevant saving clause of the English Statute and that of the General Clauses Act.

Nor can we find any justification for the second criticism. In the instant case the legal position is exactly the same. By reason of the Indo-French Agreement the Government of India made the Order under the Foreign Jurisdiction Act applying the Indian laws to Pondicherry. The effect of that Order was that the French laws were repealed by the application of the Indian laws in the same field occupied by the French laws subject to a saving clause. The position is analogous to that of a statute repealing another with a saving clause. If the English decisions apply to the latter situation, we do not see how they do not apply to the former. In both the cases the pre-existing law continues to govern the things done before a particular date. We, therefore, hold that the words " things done " in paragraph 6 of the Order are comprehensive enough to take in a transaction effected before the merger, though some of its legal effects and consequences projected into the post-merger period.

Now what was the inter-relation between the said " things done " and the act of import or bringing of the goods into India ? The effect of the contracts under the pre-existing law was that the terms thereof could have been implemented without any customs bar placed against the import. This Court had, in the context of Art. 286(1)(b) of the Constitution, to consider the connotation of the words " in the course of export or import " in *State of Travancore-Cochin* v. *The Bombay Co. Ltd.* (1). Patanjali Sastri, C. J., described the nature of export sale thus at p. 1118 :

" Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for

(1) [1952] S.C.R. 1112.

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Subba Rao J.

transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction."

The same principle has been restated by the learned Chief Justice in *State of Travancore-Cochin* v. *Shanmugha Vilas Cashew Nut Factory* (1). The learned Chief Justice stated at p. 63 thus:

"The phrase "integrated activities" was used in the previous decision to denote that a sale, that is, a sale which occasions the export, cannot be dissociated from the export without which it cannot be effectuated and the sale and resultant export form parts of a single transaction".

Applying the said principles to an import sale it may be stated that a purchase by import involves a series of integrated activities commencing from the contract of purchase with a foreign firm and ending with the bringing of the goods into the importing country and that the purchase and resultant import form parts of a same transaction. If so, in the present case the bringing of the goods into India and the relevant contracts entered into by the petitioners with the foreign dealers form parts of a same transaction. The imports, therefore, were the effect or the legal consequence of the "things done", i.e., the contracts entered into by the petitioners with the foriegn dealers.

This conclusion is also reinforced by the terms of the Indo-French Agreement. It is common case that the terms of the said Agreement cannot be enforced in a municipal court in India. We are only referring to it as the terms thereof throw some light on the proper understanding of the saving clause. By Art. 17 of the Agreement, in so far as material for our purpose, all orders placed outside the Establishments and finalised through the grant of a licence by competent authorities in accordance with laws and regulations in force prior to the date of the *de facto* transfer were to be fulfilled by the Government of India and the necessary foreign exchange granted if the goods were imported

(1) [1954] S.C.R. 53.

within the period of validity of the relevant licences subject to payment of customs duty and other taxes normally leviable at Indian ports. That is, orders placed outside the Establishments and finalised through the grant of a licence were to be honoured by the Government of India. The word "licence" in this Article may be construed rather widely to take in a permit or an authorization; otherwise it would lead to the anomaly that when a licence, strictly so called, is required for a transaction and therefore obtained, the transaction is protected by the Article, whereas the transaction which requires only a permit is excluded therefrom. It may be recalled that the petitioners obtained authorizations of the Economics Department in respect of their orders. This Article indicates the intention of the two Governments that the orders so placed outside the Establishments should be honoured. If paragraph 6 of the Order is construed in the manner suggested by the State, we would be imputing to the framers of the Order a conscious breach of the terms of the Agreement between the two countries, for even the orders covered by Art. 17 of the Agreement would be excluded from the operation of the saving clause.

We would, therefore, hold that paragraph 6 of the Order saves the transactions entered into by the petitioners and that the respondents had no right to confiscate their goods on the ground that they were imported without licence. In this view, no other question arises for consideration.

In the result, the orders of the respondents 2, 3 and 4 are quashed and they are directed to refund to the petitioners the amounts illegally collected from them. The petitioners in all the petitions will have their costs.

SARKAR J.—I think that these petitions should fail.

Sometime in the latter half of 1954, the petitioners had in Pondicherry, then a French establishment in India, entered into certain agreements with foreign suppliers for the import into Pondicherry of diverse goods. It is said that at that time licences were not

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Sarkar J.

required for such imports from the French authorities. It appears however that these authorities granted a certain amount of foreign exchange for the imports. The importers who failed to secure an allotment of foreign exchange from the French authorities often obtained it from the open market through banks. The French authorities however prohibited the banks in Pondicherry with effect from July 1, 1954, from acquiring without their permission, foreign exchange in the open market for their constituents for financing imports. The petitioners had with the consent of the French authorities obtained through the banks foreign exchange from the open market to finance their imports and had with the foreign exchange so acquired, opened irrevocable letters of credit in favour of their foreign suppliers on account of the price of the goods to be supplied. They did this shortly prior to the transfer of administration of Pondicherry and other French establishments in India on November 1, 1954, to India pursuant to an agreement made on October 21, 1954, between the Governments of France and India. The goods covered by the aforesaid imports were shipped and arrived in Pondicherry port after November 1, 1954, and were confiscated by the Government of India who had by that time taken over the administration of Pondicherry. The orders of confiscation gave an option to the petitioners to obtain a release of the goods by payment of a fine which option was availed of by them.

These petitions have been filed under Art. 32 of the Constitution challenging the validity of the confiscation and claiming a refund of the fine paid on the ground that the confiscation was an illegal violation of the petitioners' rights under the Constitution to hold property and to carry on business.

The orders of confiscation had been made under s. 167(8) of the Sea Customs Act, 1878. That section authorised the confiscation of goods imported in contravention of orders prohibiting imports made under s. 19 of the same Act. Section 3 of the Imports and Exports (Control) Act, 1947, also authorised the Central Government to prohibit by orders made by it,

imports of goods of any specified description and provided that the goods to which the orders applied would be deemed to be goods of which the import had been prohibited under s. 19 of the Sea Customs Act and that the provisions of the latter Act would have effect accordingly. Section 4 of the Imports and Exports (Control) Act provided that all orders made under r. 84 of the Defence of India Rules and in force immediately before the commencement of the Act, would be deemed to have been made under the Act. There was an order made by the Government of India under r. 84 of the Defence of India Rules by Notification of the Department of Commerce No. 23 I.T.C. 43 dated July 1, 1943, which prohibited the import of the goods which the petitioners had imported.

The orders of confiscation would be unexceptionable if the statutes and Order mentioned in the preceding paragraph applied to these imports. That they applied to Pondicherry as from November 1, 1954, would seem to be plain from the Order passed by the Government of India on October 30, 1954, under the Foreign Jurisdiction Act, 1947, to take effect from the date of the transfer of administration, namely, November 1, 1954, called the French Establishments (Application of Laws) Order and being Ministry of External Affairs Notification No. S.R.O. 3315. This Order had been passed in view of the Indo-French agreement and the transfer of administration provided thereby. Its validity is not challenged. Paragraph 3 of the Order provided that the enactments mentioned in the Schedule to it and all Orders made under those enactments and in force on November 1, 1954, would apply to the French Establishments subject to the subsequent provisions of the Order. The enactments mentioned in the Schedule included the Sea Customs Act and the Imports and Exports (Control) Act. It is not in dispute that the Order under the Defence of India Rules mentioned earlier was in force on this date.

The Application of Laws Order therefore made the

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Sarkar J.

Sea Customs Act, the Imports and Exports (Control) Act and the Order made under the Defence of India Rules applicable to Pondicherry as from November 1, 1954. The petitioners have however contended—for reasons which I will examine presently—that the Order made under the Defence of India Rules had not been applied to the French Establishments by the Application of Laws Order, but they have not disputed that the Sea Customs Act and the Imports and Exports (Control) Act were applied to Pondicherry. The petitioners rested their case mainly on the saving clause contained in paragraph 6 of the Application of Laws Order which so far as material, was in these terms:

"All laws in force in the French Establishments immediately before the commencement of this Order, which correspond to the enactments in the Schedule, shall cease to have effect save as respect things done or omitted to be done before such commencement".

The petitioners have raised three points, two of which can be disposed of at once. It is said that the Order made under the Defence of India Rules did not apply to the French Establishments for only Orders made under the enactments mentioned in the Schedule were applied to them by paragraph 3 of the Application of Laws Order, and the Defence of India Act and Rules were not enactments mentioned in the Schedule. It is true that the Defence of India Act and Rules are not mentioned in the Schedule. But as already stated, under s. 4 of the Imports and Exports (Control) Act, Orders made under r. 84 of the Defence of India Rules are to be deemed to have been made under that Act. I am unable to accept the contention that an Order which has to be deemed to be made under the Imports and Exports (Control) Act is not an Order made under the Act for the purposes of paragraph 3 of the Application of Laws Order. It seems to me that when an Order is required to be deemed to have been made under an enactment, it is as good as an Order made under the enactment. If it were not so, the deeming provision would lose much of

its value. That being so, para. 3 would make the Order applicable to Pondicherry.

Then it is said that the imports were made before the commencement of the Application of Laws Order because the contracts in respect of them had been concluded and the letters of credit opened before then though the goods had not been taken across the customs barrier at Pondicherry by that time. Therefore, it is said, the imports by the petitioners would be within the saving clause in paragraph 6 as things done before the commencement of the Application of Laws Order, to which the Sea Customs Act, the Imports and Exports (Control) Act and the Order made under the Defence of India Rules would not apply. This argument also seems to me to be ill-founded.

These Acts and the Order were applied to Pondicherry as from November 1, 1954. The effect of that was to prohibit imports thereafter and to render the goods imported in contravention of that prohibition liable to confiscation. What is an import—and this is what was prohibited—has therefore to be decided by reference to these Acts and the Order. They defined import as bringing goods into India, which in the present case would include the French Establishments by virtue of paragraph 4 of the Application of Laws Order. Therefore goods brought across the customs' barrier into Pondicherry would be goods imported into Pondicherry. To the goods so brought into Pondicherry after November 1, 1954, the Acts and the Order made under the Defence of India Rules must apply irrespective of whether the goods were brought under contracts concluded and letters of credit opened, before that date. It is not in my view permissible to ascertain the meaning of the word 'import' for the purpose of this case by reference to other statutes or notions and to contend that there has been an import by the making of the contract and the opening of the letter of credit without the bringing of the goods into Pondicherry as the learned counsel for the petitioners sought to do.

The main argument on behalf of the petitioners is however, that the words 'save as respects things done

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Sarkar J.

or omitted to be done' in paragraph 6 of the Application of Laws Order saved not only the things done prior to the commencement of the Order, that is, the placing of the indents and the opening of the letters of credit but also the effect thereof and the rights accrued therefrom. It is said that the indents had been legally placed and the letters of credit legally opened with foreign exchange acquired with the express permission of the French Administration which foreign exchange could not have been acquired without such permission. It is contended that the saving clause would make the French laws applicable to the imports which were the effect of these things done before November 1, 1954, and also protect the rights acquired from the things so done, from the operation of the Indian laws. So it is said that the confiscations under the Indian laws were wholly illegal.

Now it has to be noted that the saving clause does not say that the French laws would apply to the effect of things earlier done or protect rights accrued therefrom. I see no warrant in the absence of the necessary words to extend the application of the French laws to the effect of things done or rights acquired from the doing of them. It was said that otherwise the saving clause would be idle. I am unable to agree. If any question as to anything earlier done arose after the transfer, that question would under the saving clause have to be decided by the French laws. In the absence of the saving clause it would have been open to argument what the effect of the transfer was with regard to things previously done. I may also point out that s. 6 of the General Clauses Act provides that when one enactment is repealed by another, then, in the absence of a different intention, the repeal shall not affect anything duly done or suffered under the repealed enactment nor any right accrued thereunder. It strikes me that if the saving of a thing done under the repealed enactment also necessarily saved what is called the effect of it or rights acquired from it, it would not have been necessary to expressly provide also for the saving of the rights acquired under the repealed enactment.

Therefore, it seems to me that the saving of things done does not automatically save the effect of them or rights acquired therefrom.

The argument that the saving clause operated to protect the imports was based on two English cases, namely, *The Queen* v. *Justices of the West Riding of Yorkshire* (1) and *Heston and Isleworth Urban District Council* v. *Grout* (2). These cases considered the terms of statutes analogous to s. 6 of our General Clauses Act, providing that a repeal of one enactment by another shall not affect anything duly done or suffered under the repealed enactment or any right acquired thereunder. These provisions were therefore materially different from the saving clause now before us, as they expressly saved rights acquired under a repealed statute. The first mentioned case held that as the two statutes were substantially for the same purpose, namely, making a rate, the notice to make a rate under the repealed Act should have effect after the repeal in view of the saving clause, as it could have been given under the repealing Act for the same purpose. It would be difficult to apply the principle of this case where two statutes have not the same purpose. Apart from the fact that we have here no two statutes, the Indian enactments with which we are concerned, would seem to have made a complete departure from the position existing on the same subject during the French Administration. In the other case it was held that when a thing duly done under a repealed enactment was saved by a saving clause in the repealing Act, the effect of it was also saved. But the effect of the thing done would be saved by the express provision contained in the saving clause, namely, that the repeal shall not affect any right acquired under the repealed enactment and the judgment in this case was also based on this express provision to remove any doubts that might arise as to the other reasoning employed. The thing done in this case was the giving of a notice by a local authority to certain house owners to sewer and make up a private street. The effect saved was the recovery by the local authority from the owners of the expenses of the sewering

(1) (1876) 1 Q.B.D. 220. (2) [1897] 2 Ch. 306.

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Sarkar J.

and making of the street which it had to incur on the owner's failure to carry out the terms of the notice. These things naturally took time and in the meantime the Act under which the notice was given had ceased to be applicable. The observation made in this case cannot be applied to a case like the present.

Then again it seems to me that there is considerable difference between the terms of the saving clause, considered in the English cases and the saving clause with which we are concerned. The saving clause in the English cases as also s. 6 of our General Clauses Act, applies where a subsequent statute repeals a previous statute passed by the legislature of the same country. That is not the position here. We have here laws of the Indian legislature replacing French laws. Indeed it is at least arguable whether without more, the French laws would have been of force after the transfer; it would seem that this difficulty was realised and so it was expressly provided by paragraph 5 of another Order called the French Establishments (Administration) Order, made by Notification No. 3314 dated October 30, 1954, issued by the External Affairs Ministry of the Government of India, that all laws in force in the French Establishments and not repealed by para. 6 of the Application of Laws Order, would continue to be in force until repealed.

Further, the saving clauses considered in the English cases preserved unaffected by the repeal, only things done under the repealed enactment and the rights acquired thereunder. The saving clause that we are considering saves things done before the commencement of the Application of Laws Order whether the thing was done under any law or not; it does not purport to preserve a right acquired under a statute repealed. In *Hamilton Gell* v. *White* (1), it was observed that s. 38 of the English Interpretation Act, 1889, which corresponds to s. 6 of our General Clauses Act, " was not intended to preserve the abstract rights conferred by the repealed Act.....It only applies to specific rights given to an individual upon the happening of one or other of the events specified in the

(1) [1922] 2 K.B. 422, 431.

statute." Likewise in *Abbott* v. *Minister for Lands* (1) it was observed about a saving clause which protected rights accrued under repealed enactments, that, "the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of the right, cannot properly be deemed a "right accrued" within the meaning of the enactment". The principle of the English cases on which the petitioners relied would not apply except to protect rights acquired under repealed statutes. In the cases before us the petitioners could not say that they had acquired any right under any French law, to import the goods. There was admittedly no law which gave the petitioners any right to import any goods. The position was only that there was an absence of laws prohibiting import. That clearly did not give the petitioners any right and certainly not a right under a statute which was repealed. All that the French authorities had done was to permit the petitioners to acquire foreign exchange in the open market for financing their imports. It would be impossible to say that thereby the petitioners acquired any right under any French law to import any goods.

Lastly, the principle of the two English cases applies admittedly only where there is no intention to the contrary. Now it seems to me that here there is indication of an intention to the contrary. Clause 17 of the agreement between India and France provided that imports finalised through the grant of licence prior to the transfer would be fulfilled but the goods would be liable to customs duty normally leviable in Indian ports. Clearly, therefore, it was not intended that after the transfer, Pondicherry would remain a free port in respect of imports made even under agreements concluded prior to the transfer under a licence. On such imports duty had to be paid after the transfer. The right to import freely was not therefore intended to be preserved. If so there could have been no intention, in any event, to protect a right to import freely

(1) [1895] A.C. 425, 431.

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Sarkar J.

under an agreement made prior to the transfer, where there was no licence granted for the import. Admittedly, the petitioners had not obtained any such licence.

For all these reasons it seems to me that the English decisions relied on are of no assistance in the present case. I am unable to read the saving clause in this case as if it is the same as s. 6 of our General Clauses Act or the corresponding clause in the English Interpretation Act, 1889, and to obtain guidance from the decisions based on these statutes. I have therefore come to the conclusion that the saving clause in paragraph 6 of the Application of Laws Order does not protect the imports made by the petitioners, from the operation of the Indian laws applied to the French Establishments.

I would dismiss these petitions.

Shah J.

SHAH J.—Petition No. 123 of 1957: Prior to November 1, 1954, Pondicherry was one of the French Establishments in India administered by the Government of France. Under the French administration, except specified categories like gold, rock-salt and certain medicinal preparations, all commodities could be imported into the Pondicherry Port without a licence. The French Administration exercised control on import of commodities into Pondicherry indirectly by making allotment of the requisite foreign exchange. The Government of France made an overall allotment of foreign exchange for the French Establishments in India, and persons desiring to import goods in Pondicherry and other French Indian settlements were, on applications addressed to the Chief Commissioner, French Settlements, granted foreign exchange facility for financing imports, out of that allotment. Besides the allotment of foreign exchange for financing imports into the French Establishments in India, certain other currency allotments were made by the Government of France in the light of Trade Agreements between the French Government and other countries. The Chief Commissioner of Pondicherry issued permits for the import of commodities specified in the Trade

Agreements upto the current ceilings fixed in the Agreements. Two kinds of permits for obtaining official exchange by importers were issued by the Chief Commissioner which were known as "Authorisation" and "Attestation". "Authorisation" was issued for import of goods from countries with which France had Trade Agreements and "Attestation" for import of goods from France and from countries with which the Government of France had not made Trade Agreements. By issuing "Authorisation" and "Attestation", the Government undertook to provide foreign exchange for financing the imports made pursuant thereto. Since April 1, 1954, the Chief Commissioner of Pondicherry allowed intending importers to purchase foreign exchange in the open market for financing imports of merchandise. The Department of Affairs, Economiques, endorsed "authorise" on the application submitted by the importers' banker in respect of such transactions, but the Government did not undertake thereby to provide foreign exchange. As official exchange for imports was freely released, only a few imports were financed before July 1954 with the aid of exchange purchased in the open market.

Negotiations were proceeding between the Government of India and the Government of France for transfer of the French Establishments in India to the Union of India, and when it came to be known that the transfer was imminent, there was feverish activity to import goods into the French Settlements with the aid of foreign exchange purchased in the open market, and in the months of August, September and October orders were placed by importers with foreign suppliers for purchase of commodities of the value of Rs. 280 lakhs to be financed by foreign exchange procured from the open market. Traders who were not normally doing business in Pondicherry and who had no business interest in French Establishments also opened offices in Pondicherry and started indenting goods, to be financed with the aid of foreign exchange in the open market.

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Shah J.

An agreement for the *de facto* transfer of the administration of the French Establishments in India was executed between the Government of India and the Government of France on October 21, 1954. This agreement became effective on November 1, 1954. In exercise of the powers conferred by s. 4 of the Foreign Jurisdiction Act, 1947, on October 31, 1954, the Government of India issued two orders—S. R. O. 3314, the French Establishments (Administration) Order, 1954, and S. R. O. 3315, the French Establishments (Application of Laws) Order, 1954. By S. R. O. 3315, certain enactments specified in column (3) of the Schedule which included the Sea Customs Act, 1878, The Reserve Bank of India Act, 1934, The Imports and Exports Trade (Control) Act, 1947, The Foreign Exchange Regulation Act, 1947 and The Indian Tariff Act, 1934, were applied to the French Establishments of Pondicherry, Karaikal, Mahe and Yanam, with the modification that references in the enactments, notifications, orders and regulations which were applied to the French Establishments, to India or to the States were to be construed as referring to the French Establishments also. These orders came into force on November 1, 1954.

The petitioners who carried on trade in diverse commodities in Bombay opened a place of business in Pondicherry on April 14, 1954, and placed eight indents with Messrs. Shimada Trading Co., Ltd., Osaka, Japan, for importing procelain ware, glass marbles and beltings. On an application submitted by Bankque D. L' Indo-China on behalf of the petitioners, the Bureau Des Affairs Economique, Pondicherry, endorsed "authorise" for the requisite foreign exchange purchased in the open market. This exchange was sold to the petitioners for the amount involved in the letters of credit. Between August 28, 1954, and August 31, 1954, three irrevocable letters of credit of the aggregate value of £ 12,850 were opened by the petitioners and pursuant to these letters, M/s. Shimada Trading Co., Ltd., shipped goods to Pondicherry. On November 30, 1954, the shipping documents were received by the petitioners from Messrs. Shimada Trading Co., Ltd.

Admittedly the goods were shipped by the foreign suppliers after the *de facto* transfer of Pondicherry. The applications submitted by the petitioners for the issue of customs permits sanctioning clearance of the goods were rejected by the Controller of Imports and Exports at Pondicherry. On January 5, 1955, the Chief Controller of Imports and Exports issued a public notification that on a consideration of the representations made by some of the importers asking for permission to import goods for which necessary foreign exchange had been obtained in the open market through bankers in Pondicherry and in consultation with the authorities concerned, it was "clarified for information" that open market transactions of the nature referred to in the representations were not covered by the Indo-French Agreement, and that the import of goods against open market transactions after November 1, 1954, must be treated as unauthorised; but having regard to the hardship likely to be caused to genuine importers who had placed orders in pursuance of their normal trading operations, the Collector of Customs, Pondicherry, was being authorised to accord certain concessions to genuine importers. By one of such concessions, goods shipped before November 1, 1954, were permitted to be cleared "without penalty" irrespective of their origin and value, and consignments fully paid for in foreign currency and shipped after November 1, 1954, and ordered before August 15, 1954, were also permitted to be cleared "without penalty".

The goods indented by the petitioners were confiscated by the customs authorities exercising powers under s. 167(8) of the Sea Customs Act, on the ground that the same had been imported without a valid licence and in contravention of the Department of Commerce and Industries Notification No. 43-1 T.C./43 dated July 1, 1943, (as amended) read with sub-s. 2 of s. 3 of the Imports and Exports Trade (Control) Act, 1947. The petitioners were by orders passed between February 28 and March 4, 1955, given an option to clear the goods for "home consumption" on payment of customs duty and fine specified in the order. These

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Shah J.

orders were confirmed in appeal by the Board of Revenue and by the Government of India in exercise of revisional jurisdiction. In the meanwhile the petitioners paid the duty and the fine imposed by the customs authority and cleared the goods.

The Union Government having rejected the Revision applications, the petitioners submitted this petition under Art. 32 of the Constitution for a writ or direction in the nature of *certiorari* requiring and commanding the Chief Controller of Imports and Exports, Pondicherry, the Collector of Customs and Central Excise, Pondicherry, the Central Board of Revenue and the Union of India and quashing the orders passed by the Customs authorities and the Union of India and for a *mandamus* requiring the respondents to forbear from giving effect to or otherwise acting upon the orders passed by the Customs authorities and the Union of India, and for a further writ or order directing the respondents to restore to the petitioners the sum of Rs. 30,890 paid as penalty for releasing the goods.

Undoubtedly, the petitioners had before November 1, 1954, placed indents for importing goods of diverse descriptions from foreign suppliers and for that purpose, they had acquired foreign exchange through their bankers in the open market. The petitioners had also opened irrevocable letters of credit in favour of the Japanese suppliers. It may be assumed, even though there is no clear evidence in that behalf, that the petitioners were after opening irrevocable letters of credit, unable to cancel the indents. Section 167, cl. (8), of the Sea Customs Act, in so far as it is material, provides that if any goods, the importation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, are imported into India contrary to such prohibition or restriction, such goods shall be liable to confiscation. By s. 3 of the Imports and Exports Trade (Control) Act, XVIII of 1947, the Central Government is authorised by order published in the official Gazette to prohibit, restrict or otherwise control in all cases or in specified classes of cases, the import, the bringing into any Port or place

in India of goods of any specified description. By s. 4, all orders made under r. 84 of the Defence of India Rules or that rule as continued in force by the Emergency Provisions (Continuation) Ordinance, 1946, and in force immediately before the commencement of the Act, in so far as they were not inconsistent with the provisions of that Act, continued to remain in force and were to be deemed to have been made thereunder. Under the rules framed under the Defence of India Rules, the import of goods of the description indented by the petitioners, was, it is not disputed, prohibited, and the rules framed under the Defence of India Rules continued in force by the operation of s. 4 of the Imports and Exports Trade (Control) Act, 1947. The rules and orders made under r. 84 of the Defence of India Rules were on November 1, 1954, operative as if they were made under the Imports and Exports Trade (Control) Act, 1947, and when that Act was extended to the French Establishment of Pondicherry, these rules and orders became also applicable to that area. By s. 19 of the Sea Customs Act, the Central Government may by notification prohibit or restrict the bringing by sea, goods of any specified description into India across any customs frontier as defined by the Central Government. By s. 2(b) of the Imports and Exports Trade (Control) Act, 1947, import is defined as bringing into India by sea, land or air. Import of goods therefore means carrying goods across the customs frontier declared by the Government of India. There is no dispute that under s. 19, the Port of Pondicherry was declared a customs frontier. Admittedly, the goods indented by the petitioners were brought into India, i.e., imported into India after November 1, 1954. Importation of these goods without a licence in that behalf being prohibited under a notification under the Imports and Exports Trade (Control) Act, by bringing the goods into the Pondicherry Port, prima facie s. 167(8) of the Sea Customs Act was contravened.

But the petitioners contend that in view of the agreement between the Government of India and the Government of France and the two orders issued in

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Shah J.

exercise of the powers conferred by s. 4 of the Foreign Jurisdiction Act, 1947, the provisions of the Sea Customs Act and the orders made or deemed to be made under the Imports and Exports Trade (Control) Act, 1947, did not apply to the goods in question. By cl. 3 of the agreement dated October 21, 1954, the Government of India succeeded to the rights and obligations resulting from such acts of the French Administration in these Establishments as were binding on the territory. By para. 5 of Art. 10, acts or deeds constitutive of rights established prior to the date of the *de facto* transfer in conformity with French law retained the value and validity conferred at that time (by the same law). By Art. 17, in so far as it is material, all orders placed outside the establishments and finalised through the grant of a licence by competent authorities in accordance with the laws and regulations in force prior to the date of the *de facto* transfer were to be fulfilled by the Government of India who were to grant the requisite foreign currency, if the goods were imported within the period of validity of the relevant licence subject to payment of customs duty and other taxes normally leviable at Indian Ports. This agreement is between the Government of India and the Government of France, and the covenants thereof do not purport to and cannot confer any rights enforceable at the instance of citizens of Pondicherry or of India. By s. 3, certain obligations enforceable against the French Administration were undertaken by the Government of India, but no obligations thereby enforceable were undertaken by the Indian Government which the petitioners could enforce. Para. 5 of Art. 10 falls in the chapter headed "Judicial Matters" and only declares that acts and deeds which constitute rights in conformity with the French Law shall retain the same value after merger with the Union of India and by Art. 17, the obligation is undertaken by the Government of India to fulfil the orders placed outside the Establishments and finalised through the grant of a licence by competent authorities. But the petitioners had obtained no license from any competent authority for importing or even for indenting the goods.

It was urged that the orders S. R. O. 3314 and S. R. O. 3315 issued under the Foreign Jurisdiction Act should be construed in the light of the agreement between the Government of India and the Government of France. By S. R. O. 3314, provision is made by the Government of India for the administration of the erstwhile French Establishments. By cl. 5 of that notification, all laws in force in the French Establishments or any part thereof immediately before the commencement of the order and not repealed by cl. 6 of the French Establishments (Application of Laws) Order, 1954, shall continue to remain in force until repealed or amended by a competent authority. The law, if any, relating to the import of goods into India applicable in the French Establishments prior to November 1, 1954, stood expressly repealed by cl. 3 of S. R. O. 3315 which provided that the enactments specified in column 3 of the Schedule as in force before the commencement of this order shall be applied to and shall be in force in the French Establishments subject to (a) any amendments to which the enactments are for the time being generally subject in the territories to which they extend; (b) the modifications, if any, specified in column 4 of the schedule; and (c) the subsequent provisions of the order. By column 3 of the schedule to this order, the Sea Customs Act, the Reserve Bank of India Act and the Imports and Exports Trade (Control) Act were expressly applied to the French Establishments, and under the provisions of these Acts and notifications issued thereunder as from November 1, 1954, no person could without a license in that behalf import goods of the nature indented by the petitioners. By cl. 6, it was enacted that "unless otherwise specifically provided in the schedule, all laws in force in the French Establishments immediately before the commencement of this order, which correspond to the enactments specified in the schedule, shall cease to have effect, save as respects things done or omitted to be done before such commencement". The Sea Customs Act and the Imports and Exports Trade (Control) Act were expressly made applicable to the French Establishment of

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Shah J.

Pondicherry and all corresponding law in that territory ceased to have effect save as respects things done or omitted to be done before such commencement. Clause 6 does not authorise the doing of things expressly forbidden by the provisions of the Acts made applicable by schedule 3 in the Pondicherry Establishment, and by the use of the expression, "things done or omitted to be done" in the clause, to the rights or legal consequences which may but for the application of the enactments specified in schedule 3 have flown from the acts done or omitted to be done the French law does not continue to apply. The clause undoubtedly protects French laws which correspond to the enactments specified in schedule 3 in so far as they concern things done or omitted to be done before the commencement of S. R. O. 3315. In superseding the French law in force on the prescribed date, the cl. 6 emphasises that the enactments specified in schedule 3 have no retrospective operation, and as counterpart thereof provides that all transactions which have been concluded before November 1, 1954, will continue to be govered by the French law notwithstanding the enactment of the Acts specified.

Since the date of the *de facto* transfer of the French Establishments to the Indian Union, all imports of goods across the customs frontier at Pondicherry were subject to the provisions of the Sea Customs Act and the Imports and Exports Trade (Control) Act; and goods shipped after November 1, 1954, in pursuance of indents before that date were not expressly saved from the operation of the restrictive provisions of those Acts. On and from November 1, 1954, the law if any relating to the import of goods operative in the French territory was superseded and the goods having been brought into the Pondicherry Port after November 1, 1954, the import was governed by the Sea Customs Act and the Imports and Exports Trade (Control) Act and not by any law of the French territory. The supersession of the French laws by the application of the statutes set out in schedule III was, on November 1, 1954, complete, "save as respects things done or omitted to be done". Does the expression "things done" include consequences which may

have ensued in future but for the supervention of the merger agreement? Ex facie, by cl. 6, the French law is kept alive in respect of "things done or omitted to be done", i.e., things done or omitted to be done in the past; it has not the effect of keeping alive that law in respect of things to be done or omitted to be done in future. All transactions completed after November 1, 1954, will, on the plain words of cl. 6, be governed by the statutes made applicable by virtue of cl. 3 of S. R. O. 3315.

Section 6 of the General Clauses Act, 1897, has in terms no application when the court is called upon to ascertain the effect of supersession of French law by the application of the specified statutes by cl. 6 of S. R. O. 3315. In terms s. 6 of the General Clauses Act applies to the effect of repeal of enactments of the Indian legislature, and there is nothing in S. R. O. 3315 which supports the plea that the section applies as if the French law in operation before merger of the French Establishments is to be regarded as a statute enacted by the Indian legislature. In that premise, it is difficult to appreciate how the principle of cases decided by the courts in England on the words of s. 38 of the Interpretation Act, 1889 (52 and 53 Vict. ch. 63) —which are substantially the same as those used in s. 6 of the General Clauses Act, 1897, can lend any assistance in interpreting the meaning of the expression "things done or omitted to be done" in cl. 6 of S. R. O. 3315. By enacting S. R. O. 3315, the French law after its supersession has not been expressly kept alive in respect of any right or privilege acquired or accrued under the things done under that law; and it would be an unwarranted incursion into the field of legislation to attempt to extend the protection of that law to transactions which have taken place after the prescribed date relying upon the General Clauses Act.

Nor is the interrelation between the agreement of purchase with a foreign seller, and the various processes leading to the delivery of goods to a common carrier and the ultimate import of goods sufficient to include within the expression "things done" used in

1960

Universal Imports Agency v. Chief Controller of Imports & Exports

Shah J.

cl. 6 of S. R. O. 3315 consequences of the things done which may ensue in future. Within the expression "in the course of import of the goods into the territory of India" used in Art. 286(1) (b) of the Constitution, a series of integrated activities resulting in the taking of goods across the customs frontier may be involved. But import as defined in the Imports and Exports Trade (Control) Act is bringing a commodity in the territory of India; preliminary steps even if they are closely integrated therewith are not included in that definition. If steps preliminary to import are not included in the concept of import, in dealing with the provisions of the Sea Customs Act and the Imports and Exports Trade (Control) Act, it would be difficult to afford protection of the French laws expressly granted by virtue of cl. 6 of S. R. O. 3315 to such of the preliminary steps as have taken place before the prescribed date, and to create an exemption in favour of imports consequential upon those preliminary steps, which the legislature has declined to do.

In my view, therefore, by the use of the expression "things done or omitted to be done before such commencement" in cl. 6 of S. R. O. 3315 French law applies to acts and omissions before November 1, 1954, and not to legal consequences of those acts and omissions ensuing after that date, and hence import of goods across the customs frontier in the Pondicherry Port after November 1, 1954, without a licence in that behalf is contrary to the provisions of the Sea Customs Act and the Imports and Exports Trade (Control) Act.

The provisions of the Sea Customs Act and the Imports and Exports Trade (Control) Act whereby restrictions are imposed upon the import and export of goods are not by themselves unreasonable. If the petitioners are not entitled to the benefit of cl. 6 of the Indo-French Agreement, there is no other ground on which they can successfully impugn the validity of the orders imposing duty and penalty.

I am therefore of the view that this petition should be dismissed with costs.

For reasons set out in the principal petition, petitions Nos. 124 and 125 of 1957 and 118 of 1959 should also be dismissed with costs.

BY COURT: In view of the majority Judgment, the petitions are allowed. The petitioners in all the petitions will have their costs.

Petitions allowed.

VASANTLAL MAGANBHAI SANJANWALA

v.

THE STATE OF BOMBAY AND OTHERS. (AND CONNECTED APPEAL)

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Agricultural Tenancy, Regulation of—Enactment empowering Government to fix lower rate of maximum rent by notification—If vitiated by excessive delegation—Notification, validity of—Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), s. 6(2).

Section 6(1) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), provided that the maximum rent payable by a tenant shall not in the case of irrigated land exceed one-fourth and in the case of any other land exceed one third of the crop of such land or its value as determined by the prescribed manner. Section 6(2) of the Act read as follows,—

"The Provincial Government may, by notification in the Official Gazette, fix a lower rate of the maximum rent payable by the tenants of lands situate in any particular area or may fix such rate on any other suitable basis as it thinks fit."

By a notification under that section the Government of Bombay, in supersession of all other notifications prescribed a rate of maximum rent which was very much lower than the one previously fixed. The petitioners challenged the vires of the said section and the validity of the notification under Art. 226 of the Constitution, but the High Court found against them. The question for determination in these appeals was whether s. 6(2) conferred unguided power on the Government and was void by reason of excessive delegation of legislative power.