(1961) 01 CAL CK 0003

In the Calcutta High Court

Case No : Suit No. 4230 of 1952

Soorajull Nagarmull APPELLANT

Vs

Assistant Collector of Customs RESPONDENT

Date of Decision : 04-01-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2, Order 6 Rule 6, Order 7 Rule 11, Order 8 Rule 5, Order 8 Rule 8
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 137, 15, 72
Customs Tariff Act, 1975 — Section 27(8)
Sea Customs Act, 1878 — Section 144, 41, 92

Citation : (1962) 1 ILR (Cal) 29

Hon'ble Judges : Datta, J

Bench : Single Bench

Advocate : S.M. Bose, General, B. Das and Amiya K. Basu, for the Appellant;G.P. Kar and R.M. Datta, for the Respondent

Judgement

Datta, J.—This is a suit filed by Soorajmull Nagarmull, a partnership firm, substantially against the Union of India for a decree for refund of Rs. 75,925 deposited by the Plaintiff with the Defendants other than, Defendant No. 4, for interest on the said sum at 8 per cent, per annum until payment or realisation; for a declaration that the alleged Bond, dated March 28, 1950, mentioned in the plaint was and is void and/or unenforceable, and, in the alternative, for a declaration that the said Bond has become void and unenforceable and/or discharged; for a decree cancelling and/or discharging the said alleged Bond, dated March 28, 1950; for costs, and for other further and other reliefs.,

2. On March 6, 1950 two consignments totalling 7,215 drums of spindle oil arrived at the Calcutta Port per S.S. Santa Ama.

3. On March 7, 1950 the Plaintiff submitted bills of entries describing the goods a8 follows:

Mineral oil, U.S.A. "65 to 75 Spindle oil.

4. The oil is not ordinarily used for any other purpose than lubrication excluding any mineral oil which has its flash point below 200?F.

5. In other words the plantiff declared the oil under item 27(8) of the first schedule which carried a duty of 0-2-6 pies per imperial gallon and accordingly the total amount of duty payable was Rs. 49,752-1-0.

6. Mr. B.D. Mukherjee the Appraiser however had doubts as to the correctness of the declaration in the bills of entries on account of strong kerosene smell and outward appearance. Therefore, on or about March 10, 1950 he gave instructions to the Chemical Department to examine I the following matters:

1. Flash point (Exact).

2. Specific gravity.

3. Consistency.

4. Solubility.

7. Thereupon the Chemist Mr. Banerjee reported on March 15, 1950 as follows:

Sp. Gr. @ 88?F. 0.880. 880 Flashpoint (exact) 217?F 217?F 217?F.

"They are oily in consistency and immiscible with water.

"They are not suitable for use as illuminate in wick "lamps. They are amber coloured oil."

7. On receipt of the report of the Chemical Examiner, dated March 15, 1950 the Assistant Collector of Customs wrote a memorandum, dated March 16, 1950, to the Plaintiff wherein he stated inter alia that "On chemical test of samples drawn from "the consignments it has been found to be classifiable as mineral "oil correctly assessable to duty under item 27(3) of the Indian "Customs Tariff", for he held the view that 217?F was not the flash point of genuine spindle oil as it appears from office note.

8. On March 16, after receipt, of the memorandum from the Assistant Collector of Customs for appraisement the Plaintiff wrote a letter on the same day to the Assistant Collector wherein they contended that the oil was properly classified under item 27(8) as the flash point was about 200?F.

9. Thereafter it seems that the matter was placed before the Assistant Commissioner of Customs who- directed that the distillation range and viscosity should be tested. Thereafter on the 18th March the Chemist Mr. Banerjee reported as follows:

O.L. 230'' and O.L. 232 "Distillation Range Up to 300?C. (15 per cent, in each case). "350?C. (42 per cent, in each case).

(Redwood) Viscosity at the rate of 104?C. 62 in each "case."

10. Thereafter it appears that there was difference between the Assistant Collector of Customs for appraisement and the Assistant Commissioner of Customs as to whether the oil should be classified under item 27(3). In his office note, dated March 22, 1950, the Assistant Commissioner noted inter alia, as follows:

Thus, there is no doubt that the oil in question is lubricating oil as understood in the trade. It is there-"fore suggested that the party''s declaration as "lubricating oil may be accepted as correct. The "case may be passed under the licence produced, but "if A.A.A. so desires a guarantee may be taken from "the party for submission of evidence of use in due "course after clearance as an additional safeguard,

11. In his note, dated March 24, 1950, the Assistant Commissioner of Customs again, noted inter alia as follows:

The tariff lays down the minimum Fahrenheit point, at "200?F. by Abel''s close test and we cannot raise this "limit to 275?F. arbitrarily.

12. Thereupon, on or about. March 28, 1950 the Plaintiff was allowed to clear oil upon their undertaking in writing to produce document showing the use of the oil as lubricating oil within three months from date thereof, failing which they thereby undertook to pay any extra duty or penalty, without prejudice to the other rights of the Customs Department in the matter that may be. imposed by the Customs Department after taking into, consideration. the merits of the case and execution of a bond whereby they undertook to the Governor General in Council to produce appropriate licence if the oil was found to be assessable under item 27(3) and further agreed to pay fine for breach of Indian Tariff Act Regulations in case the appropriate licence could not be produced. Thereafter on March 30, 1950 the Plaintiff paid provisionally duty at 27 per cent totalling a sum of Rs. 1,25,677-15.

13. On April 10, I960 alter clearing the goods, the Plaintiff asked for refund of the excess amount paid, namely, the sum of Rs. 75,935-14.

14. On May 4, the Plaintiff demanded the refund of Rs. 75,925-14. In the meantime the matter evidently reached the Collector; of Customs. Thereafter, the samples of the oil were sent to Mr. Ohari, Chief Chemist, Central Revenue, Control Laboratory, Government of India.

15. On July 25, 1950 Mr. Chari reported inter alia. "Official specification. (I.S.D. No. G/O-101-3 and Riase "Nos. 176 and 177) prescribed a minimum flash point "of 150?C. (802?F. by the Pensky Martens closed "tester). In view of these the low flash point of the "samples under reference, viz., 210?F. will preclude "its being closed as spindle oil."

16. The Custqms Department in Calcutta was evidently no! satisfied with the

report of Mr. Chari, dated July 24, 1950 for they referred the matter to Mr. P.S. Krishnan, the then Chemical Examiner of Calcutta Customs.

17. On September 9, 1950 Mr. Krishnan on several grounds mentioned therein gave the opinion that it should be classed at mineral oil N.O.S. under item 27(3) L.C.T. Mr. Krishnan however did not expressly mention anything about the flash point in his report.

18. On September 22, 1850 the Assistant Collector of Customs for appraisement intimated the Plaintiff that the oil in question has been finally decided to be assessable under item 27(3) of the Indian Customs Tariff as "mineral oil other sorts", and called upon the Plaintiff to submit proper licence within a week from that date failing which action will be taken in terms of the bond, dated March 28, 1950.

19. On receipt of the letter, dated September 22, 1950 assessing goods under item 27(3) the Plaintiff wrote a letter on October 22, 1950 that the oil was correctly assessable under item 27(5) and that the order for submissions of fresh licence should be withdrawn. Thereupon on November 21, 1950 the Plaintiff firm wrote a letter to the Collector of Customs and referred to their earlier letter of October 12, 1950 for the appreciation of their point of view and ultimately asked the Collector of Customs to withdraw the demand for payment of penalty of Rs. 4,65,473-12, This evidently did not yield any favoureble result. Thereupon the Plaintiff made an application under Article 226 of the Constitution in this Court.. On February 16, 1951 Bose, J. quashed the orders and demands contained in the letters, dated September 22, 1950 and November 17, 1950. The Customs authorities being dissatisfied took the matter to the Appeal Court. The Appeal Court consisting of Harries, C.J. and Banerjee, J. dismissed the appeal.

20. The Customs authorities, however, did not take up the matter further.

21. Thereupon on March 24, 1952 the Plaintiff gave a notice claiming interest on the said sum of Rs. 75,925-14 at the rate of 8 per cent. per annum. Thereafter on or about September 25, 1952 the Plaintiff sent notices u/s 80 of the Code of Civil Procedure. On November 24, 1952 the present suit was filed. The more important paragraphs of the plaint are paras. 5, 10, 11, 12, 17, 19, 22 and 23, They are as follows:

5. The said oil was 65-75 Pale Spindle Oil and had its flashing point above 200? of Farenheit temperature, i.e., such open flashing point was about 270?F. It was neither White Spindle Oil nor Technical White Oil, nor White Mineral Oil, but was a lubricating oil within the meaning of Item 27(8) of the said Tariff Act, 1934 and is ordinarily used only for lubrication. At all material times the said oil was assessable to Import Duty at the rate of 2'' as. 6 pies per Imperial gallon under the said Item No. 27(8).

10. Defendant No. 1 wrongfully refused to permit the Plaintiff to remove the said goods until and unless the Plaintiff executed a Bond in such terms as the said

Defendants directed. At the instance of Defendant No. 1 the Plaintiff jointly with Defendant No. 4 executed in Calcutta within the said Jurisdiction a bond, dated March 28, 1950.

11. Defendant No. 1 had no jurisdiction to require and/or to compel the Plaintiff to execute and deliver the said alleged Bond which is an invalid and/or a void document.

Alternatively, the Plaintiff contends that the said alleged Bond was executed under duress and constitutes a hard and unconscionable transaction. The said goods had arrived as long ago as March 6, 1950 and was daily incurring heavy demurrage and were being lost owing to leakage. The Plaintiff was forced by Defendant No. 1 to choose between suffering substantial or total loss of the said goods worth Rs. 4,65,473 being the C.I.F. value thereof, on account of ever increasing demurrage and leakage, and executing the Said Bond, and had no other alternative hut to execute the same.

In the further alternative, a proper Import Licence covering the goods mentioned in the Schedule to the alleged Bond had been duly submitted by the Plaintiff to the Defendants other than Defendant No. 4.

In the premises the Plaintiff incurred no obligation or liability under the said alleged Bond and/OT the obligations of the Plaintiff, if any (which is not admitted) under the said Bond was duly fulfilled and/or performed and the said Bond duly stood discharged and/or cancelled.

12. Defendant No. 1 further wrongfully refused to release the said goods unless the Plaintiff made a deposit of Rs. 75,925. The Plaintiff in the premises mentioned in the next preceding paragraph hereof and under duress and coercion and under pressure of urgent necessity had no alternative but to make a deposit of Rs. 75,925 with the Defendants other than Defendant No. 4 which the Plaintiff did on or about March 30, 1950 without prejudice to its rights in the matter. The said sum was paid to the said Defendants in Calcutta within the said jurisdiction.

17. On December 7, 1950 the Plaintiff made an application to the Honourable Court under Article 226 of the Constitution against Defendants Nos. 1, 2 and 3 for reliefs mentioned in its petition in respect of the illegal acts and/or orders of the said defendatns. By an order made on the said application and dated February 16, 1951 the pretended orders and demands contained in letters, dated September 22, 1950 and November 17, 1950, and made by Defendant No. 1 and the Defendant No. 2 respectively were quashed and cancelled and liberty was reserved to the Plaintiff to institute appropriate suit or proceedings for discharge or cancellation of the said Bond or refund of the said sum of Rs. 75,925 paid by the Plaintiff as aforesaid or for such other reliefs to which the Plaintiff might be entitled.

19. The Plaintiff is entitled to the said sum of Rs. 75,925 deposited with the first

named three Defendants in the circumstances aforesaid. In the alternative, the Plaintiff claims the said sum as money payable by the said Defendants to the Plaintiff for money received by the said Defendants for the use of the Plaintiff.

22. Furthermore the Plaintiff states and submits that in. the circumstances mentioned in paras. 10 and 11 hereof the eaid alleged Bond, dated March 28, 1950 was and is void and/or unenforceable.

In the alternative, the Plaintiff states that the said Bond has become void and is liable to be discharged and/or cancelled.

22. The said alleged Bond, if left outstanding, may cause the Plaintiff serious injury.

The more important paragraphs of the written statement are paras. 4, 6, 17, 19 and 22. They are as follows:

4. The Defendants Nos. 1 and 2 further state that the said Oil was not lubricating oil and had a strong smell of Kerosene. On examination at the Chemical Examiner''s Department, Calcutta, the distillation range of the oil was found to be up to 300?C, 15 per cont. and up to 350?C, 42 per cent. The amount of distillation at comparatively low temperature was high and that being coupled ''with the strong smell of Kerosene, could not be, according to the opinion of the said Defendants Nos. 1 and 2, lubricating oil.

6. With reference to para. 5 of the plaint, the Defendants deny the allegations contained therein. In particular, the Defendants deny that the said oil in question was a lubricating oil within the meaning of item 27(8) of the Tariff or had the flashing point as alleged. The Defendants further state that samples were duly drawn from the consignment in question by the Customs Officers in presence of the Plaintiff''s representative and the same were duly analysed and the result of the final analysis is contained in a letter, dated July 25, 1950, from the Chief Chemist, Central Revenue Control Laboratory, Government of India, New Delhi. From the said analysis, it was clear to the Defendants Nos. 1 and 2 that the oil in question was not covered by the said Import Licence as the same was not lubricating oil. A copy of the said letter, dated July 25, 1950, is annexed hereto and marked "A".

Save and except what is hereinbefore stated the Defendants deny all other allegations contained in the said paragraph which are contrary thereto or inconsistent therewith.

17. With reference to paras. 17 and 18 of the plaint the Defendants state that the same are matters of record and will refer to such records at the time of hearing of the present suit. Save and except what is contained in such records the Defendants, deny each and every allegations contained in the said paragraphs which are contrary to or inconsistent with such records.

19. With regard to para. 20 of the plaint the Defendants state that the Plaintiff is

not entitled to the refund of the said sum or any portion thereof and any demand for such refund and/or payment is wrongful.

20. With reference to para. 24 of the plaint the Defendants state that the Defendant No. 3 is outside the jurisdiction of this Hon''ble Court and as such no suit is maintainable against the said Defendant, in any event leave under Clause 12 against the Defendant No. 3 should be revoked and/or cancelled.

23. The following issues were settled:

1. Was the oil in suit lubricating oil within the meaning of item 27(8) of the Indian Customs Tariff Act, 1934?

2. Was the Bond, dated March 28, 1950, executed under duress and/or does it constitute a hard and unconscionable transaction as alleged in the plaint?

3. Did the Defendant No. 1 have any jurisdiction to require, or compel the Plaintiff to execute or deliver the said bond?

4. Was the said bond duly fulfilled and/or performed and thereby stood discharged and/or cancelled as alleged in paragraph 11 of the plaint?

5. Had not the Defendant No. 1 power or jurisdiction to impose increased duty or penalty exceeding Rs. 100 as alleged in para. 7 of the plaint.

6. To what relief, if any, is the Plaintiff entitled as against the Defendants Nos. 1, 3 and 3?

24. Mr. Kar submitted a written draft of the issues. Later on he submitted that two further issues should be included in his draft issues. One was, "Was the suit "premature" and the other was "Has the Plaintiff any "cause of action and is the suit maintainable."

25. At the outset in the opening Mr. Basu submitted that in view of the orders on the applipation under Article 226 of the Constitution, the extra amount paid by the Plaintiff becomes automatically refundable to them and suggested that an issue be raised to the effect that "Is the Plaintiff entitled to the refund of the sum "of Rs. 75,925-14 in view of the orders made in the application "under Article 226 of the Constitution?" Mr. Basu also indicated that the Plaintiff should be allowed to raise an issue as to the validity or otherwise of the bond, dated March 28, 1950, in view of a decision in The State of Uttar Pradesh v. Mohammed Sayeed (1957) S.0.R. 770.

26. At one stage I indicated that if the parties so desired they may apply for adjournment and thereafter make an application for amendment of the pleading. The parties desired to proceed on the basis of their pleadings as they are.

27. At another stage I disallowed these additional issues but later on, on second thought I indicated to the parties that I will hear them on those points or issues at the time of arguments and then decide whether I should settle those issues or any of them.

28. Therefore, I will take up firstly the issues which were sought to be raised before me on behalf of the Defendants.

29. The first issue is, "Is the suit premature?"

30. This is a point of far-reaching importance, for, if accepted it will result in the dismissal of the suit. This issue arises on these facts. The notice, dated September 22, 1952, u/s 80 of the CPC reached the Defendant on or about" September 29, 1952. The suit was filed on November 24, 1952, that is to say, 5 days before the expiration of two months after the delivery of the notice.

31. Mr. Kar. Learned Counsel for the Union of India, submitted that the Court should dismiss the suit on the ground that it was instituted in breach or contravention of Section 80 of the CPC which is mandatory, imperative and admits of no exception.

32. There is apparenly great force in this contention.

33. Mr. Advocate-General submitted that the Defendant should not be allowed to raise this defence after eight years and in paricular in view of the pleadings of the parties.

34. Paragraph 23 of the plaint is as follows:

Due notices u/s 80 of the CPC have been given and/or delivered to the Defendants Nos. 1, 2 and 3.

The Defendant has not dealt with the above allegations at all in the written statement.

Order 6, Rule 6 states inter alia that any condition precedent the performance or concurrence of which is intended to be contested shall be distinctly specified in his pleading by the Plaintiff or Defendant as the case may be. This was not done.

Order 8, Rule 5 states inter alia that every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading, of the Defendant shall be taken to be admitted. Hence this written statement has admitted the allegation made in the plaint.

Order 8, Rule 8 states inter alia that any ground of defence which has arisen after the institution of the suit may be raised in his written statement. This was not done.

Consequently on this state of pleading the Defendant cannot be allowed to raise this defence without amendment of the written statement.

35. Mr. Kar in order to meet the above contentions based on the rules of pleading, on the other hand submitted that under Order 6, Rule 2 of the CPC Code, the Defendant was bound to plead only material facts and not evidence and in this case he could not plead the material facts as he could not have and did not have the notice of the date of the institution of the suit when the written

statement was drafted.

36. The date of the institution of the suit is put in the summons.

37. Therefore, this contention has no foundation.

38. Mr. Kar urged in the alternative that the court should disregard the technical rules of pleading when it is abundantly clear from the undisputed facts that the mandatory provisions of a. 80 has not been complied with.

39. The provision in Section 80 that no suit shall be instituted before the expiration of two months after the delivery of the notice is a condition precedent to the filing or institution of the suit.

40. Under Order 6, Rule 6 the performance of a condition precedent need not be pleaded for it is implied in this pleading.

41. In order to bring a notice u/s 80 of the CPC out of Order 6, Rule 6 specific imperative provision has been made in Section 80 that the plaint shall contain a statement that such notice has been so delivered or left. This was in my opinion done in order to pointedly focus the attention of the Government or Public officer to the notice so that the Government or the Public officer could raise or contest the infringement of Section 80 by its written statement. The Defendant did not avail of the averments as to notice in para. 13 of the plaint. If the Government or the Public officer does not do it in the written statement, it has still a remedy. It can apply for amendment of the written statement and if successful in that application can raise the point in defence. This course was not adopted prior to the hearing of the suit though the hearing of the suit commenced after 8 years of the filling of the suit. This course was not again adopted by the Defendant when it was indicated that the Defendant could make an application for amendment and take its chance there.

42. If such a fatal point was taken in the written statement, it was open to the Plaintiff, if he wanted to proceed with his claim, to withdraw the plaint filed and ask leave if necessary from the Court to file a subsequent suit. That course of action however perishes if the point is taken long after when such a second suit is barred by the Law of Limitation.

43. Therefore, on the pleading the Defendant should not bet allowed to raise this defence without an amendment of the written statement though it goes to the root of the suit.

44. The above conclusion or finding is supported by authorities.

45. In a case Dewey v. Warne (1845) 14 M&W. 199, 153 H.R. 448, a similar point arising out of the Metropolitan Paving Act, Geo. 3, 29'' of England, the head note seems to correctly summarise the relevant facts and the finding of the Court. The head note is as follows:

46. A surveyor appointed under the Metropolitan Paving Act, 1957 Geo. 3, C. 29,

has no right, under the 75th section of the Act, to remove a ladder placed against a house for the purpose of whitewashing it, for that section applied only to the erection of hoard''s or scaffoldings,, or to the placing of posts, bars, rails, or boards by which an inclosure is made-A licence granted by the the surveyor under that section to erect a board or scaffolding and c. on the footway of No. 14, Porter Street was held not to authorise the licensee to ereet one in another street or court although it formed one of the sides of the house in Porter Street. Where an Act provided that a Plaintiff should not recover in any action for anything done in pursuance of the Act, unless 21 days'' notice of action should be given-Held that the Defendant must plead the want of such notice, or he could not avail himself of it.

47. Mr. Advocate-General appearing for the Plaintiff further submitted that in any event, the Defendant had waived its defence to the premature filing of the suit or is estopped from raising this defence.

48. In Monindra Chandra Nandi v. The Secretary of State for India in Council (1907) 5 C.L.J. 148, a Division Bench of this Court consisting of Mr. Justice Eampini and Mr. Justice Mukherjee held inter aila as follows:

49. A notice u/s 424 of the Code (Section 80 as it was then) is given for the benefit of the Defendant and the intention of the Legislature is that the Secretary of State should have an opportunity of investigating the alleged cause of complaint and/or making amends, if he thinks fit, before he is impleaded in the suit and there is nothing to prevent the Defendant from waiving the notice or from being estopped by his conduct from pleading the want of notice at the trial.

50. Purna Chandra Sarkar v. Radharani Daseya (1930) 53 G.L.J. 31, the same view was adheared to in this Court. There were however decisions of the other High Court''s to the contrary. The difference was resolved by a decision 52 CWN 27 (Privy Council) . The Privy Council held as is correctly summarised in the head note as follows:

Section 80 of the CPC is express, explicit and mandatory, admits of no implications or exceptions, and requires that there shall be identity of the person who issues notice of suit thereunder with the person who brings the suit. Accordingly, where a notice was given on behalf of one Plaintiff stating his cause of action, his name, description and place of residence, and the relief which he claimed, the suit could not then be instituted by him and another.

51. There is no inconsistency between the propositions that the provisions of Section 80 are mandatory and must be enforced by the Court and that they may be waived by the. authority for whose benefit they are provided, and it is accordingly competent for the Defendant in a suit to which Section 80 applies to waive his right to proper notice.

52. It may be noticed that none of the cases cited, the question of waiver arose when the suit was filed before time prescribed by Section 80. The defect in the

notice related to the party or the statement of the cause of action or such other similar omission.

53. Therefore, it falls for consideration as to whether the principle of waiver is inapplicable when it relates to a premature suit u/s 80 of the CPC Code. Section 80 of the CPC can be conveniently, for this purpose, divided into two parts: (a) No suit shall be instituted against, the Government. until the expiration of two months next after notice in writing has been delivered to or left at the office of...,..:. and in the case of a Public Officer delivered to him or left at his office stating the cause of action, the name, description and place of residence of the Plaintiff and (6) and the plaint shall contain a statement that such notice has been so delivered or left.

54. The first part relates to the matters or conditions which have to be fulfilled prior to the filing of the suit. The second part relates to matters which must appear in the plaint. Therefore, there is a difference. Hence there is a possibility that the principle of waiver may not be applicable to the first part even though applicable to the second part.

55. The first part again can be sub-divided into two sub-parts or sub-clauses: (a)The stipulation of two months as to time, (b) Statement as to the cause of action, the name, description and place of residence of the Plaintiff.

56. It has been held by the Privy Council as it has been noticed earlier that the requirement as to the statement of the cause of action, the name, description and place of residence of the Plaintiff, is express, explicit and mandatory and admits of no implications or exceptions. At the most this can also be said in respect of the stipulation of two months as to time. It has been further held in the same Privy Council case that the authority for whose benefit the requirement as to the statement of the cause of action, the name, description and place of residence of the Plaintiff is made mandatory, can waive its right to a proper notice. Therefore, in my opinion, the principle of waiver is equally applicable in respect of the said first sub-part of sub-clause.

57. In this view of the matter it is clear that a plea of waiver could be set up to resist the amendment after 8 years and if the Defendant was allowed to amend its pleading at this belated stage of the suit, the Plaintiff could have raised the plea of waiver. Whether this plea would have ultimately succeeded or not, that is a different matter. Therefore if the Defendant is allowed to raise this issue at this belated stage, the Plaintiff would greatly prejudiced.

58. Hence on these considerations again the Defendant cannot be allowed to raise this plea at this belated stage of the suit.

59. Mr. Dutt appearing with Mr. Kar in reply submitted that under Order 7, Rule 11, the Court should reject the plaint.

60. It cannot come under Clause (a) of Section 11, because it cannot be said that the plaint does not disclose a cause of action. It. cannot fall under Clause

(v) or (c) because they they did not apply to the High Court. Clause (d) cannot be applied, for it does not appear to be barred from the statement in the plaint.

61. On the other hand, the statement of the plaint, to wit para. 23, makes it abundantly clear that the suit was properly instituted.

62. Hence in these circumstances, I am unable to allow an issue to be raised as to the maintainability of the suit on the ground that it has been filed before the expiration of two months required by Section 80 of the CPC Code.

63. The next point for consideration is whether the issue "Has the "Plaintiff any cause of action and is the suit maintainable?" be allowed to be raised by the Defendant at this belated stage of the suit.

64. In the plaint the officers of the Customs by their official posts or designations have been named as Defendants including the Union of India. The plaint is based, as is evident from para. 1 on the powers and duties under the Sea Customs Act (Act VIII of 1898) and the Tariff Act (Act XXXII of 1934). The plaint also states that it is incumbent on them, meaning the officers of the Customs named by their designations, to act in accordance with the said Acts. The challenge is directed against the orders of the Union of India made through its officers who derived their legal existence under the Sea Customs Act. The documents annexed and relied upon by the Plaintiff also made it abundantly order that the matter agitated has reference to the Sea Customs Act. The primary contention centres round the two competing items being items 27(3) and 27(8) of the First Schedule to the Indian Tariff Act which attracts the Sea Customs Act. The application under Article 226 was again made on the basis of the Sea Customs Act. The written statement likewise supports the conclusion that it is the Sea Customs Act upon the footing of which the controversies in this suit arise. In these circumstances, though there is no specific averment that the Sea Customs Act bars the suit in my opinion, this issue should be allowed to be raised.

65. It may be observed that in this case it was not contended before me that by reason of the absence of specific mention of this plea in the written statement the Plaintiff has been prejudiced. Therefore I amend the issues and make it issue No. 5(a).

66. Now, I will deal with the issues which were sought to be raised by the Defendant.

67. The first issue was in effect this: Is the Plaintiff entitled to the refund of the sum of Rs. 75,925-14 in view of the orders made in the application under Article 226 of the Constitution?

68. In the plaint the Plaintiff after reciting the previous facts referred to the application under Article 226 and gave a gist of the order in paragraph 17 of the plaint. In the written statement by paragraph 17 the Plaintiff said that the allegations made in paragraphs 17 and 18 are matters of record. Therefore there

was a, virtual admission of the fact that the orders and demands contained in the letters dated September 22, 1950 and November 17, 1950 were quashed and cancelled. Again the Plaintiff not only referred to the decision of this Court made on the December 7, 1950 but also referred to the decision o| the Appeal Court made on or about the February 19, 1952.

69. Moreover, in para. 19 the Plaintiff states, inter alia, as follows:

The Plaintiff is entitled to the said sum of Rs. 75,925 deposited with the first named three Defendants in the circumstances aforesaid: in the alternative the Plaintiff claimed the said sum as money payable by the said Defendants to the Plaintiff for money received by the said Defendants for the use of the Plaintiffs.

70. Therefore, it should be noticed that by the words "in the "circumstances aforesaid" the Plaintiff referred to, amongst others, the allegations made in para. 17 and para. 18 of the plaint. It is not only this. The Defendants by their written statement, para. 19, stated that the Plaintiff is not entitled to the refund of the said sum or any portion thereof and any demand for such refund and/or payment is wrongful. Therefore, an issue arises on the pleadings as they are. In these circumstances, I amend the issues and make it issue No. 5(b).

71. The next issue which was sought to be raised before me on behalf of the Plaintiff was "was the Bond, dated March 28, 1950, "void in view of the Constitution of India ?"

72. This point was not evidently in the mind of the draftsman of the Plaintiff though the words "void document" have been used in paragraph 11 of the plaint. This is a point which goes to the root of the matter so far as the Bond is concerned. It is not dependent on facts but based on a common document which is admitted by both pasties.

73. It was not urged before me that if such an issue was allowed to be raised at this stage without any pleadings, the Defendants would be debarred from raising any plea in answer thereto by way of estoppel or waiver or in any other way. In fact, if I remember aright, this point was not touched in the arguments advanced on behalf of the Defendants. Therefore, in these circumstances, I also allow this issue to be raised. This will be marked as Issue No. 5(e).

74. It is now necessary to deal with the several issues settled in this suit.

75. The primary controversy of fact was whether the oil in question attracted item No. 27(8) under the heading "Lubricating "oil" or the residuary item No. 27(3) under the heading "All "sorts of oil not otherwise specified", for it was common case that the oil did not attract items Nos. 27(4) to 27(7).

76. In order to properly appreciate the evidence on the point it is necessary to recall the declaration made by the Plaintiff in the bills of entries and the facts leading to the said letter, dated September 22, 1950, assessing the oil under the residuary item 27(3) and the note, dated November 17, 1950, calling upon the

Plaintiff to pay the sum of Rs. 475,000 in terms of the Bond and refer to the items relating to mineral oil and the specification for spindle oil of the Indian Stores Department and the evidence led by the parties before me.

77. The relevant items being item 27(3) to 27(8) of the Indian Tariff Act are as follows:

78. The relevant items being item 27(3) to 27(8) of the Indian Tariff Act are as follows:

Item No. 9 Names of articles. Nature of duty. Standard rate of duty.

1 2 3 4

27(3) All sorts of minora 1 oil not otherwise specified. Revenue 27 per cent, advalorem.

Tariff values Per Imperial gallon. Rs. a. p.

Mineral Golza oil, 2 12 0

Transformer oil, in- 3 12 0 eluding transit and switch oil other than that assessed to duty under the proviso to item No. 72(3) of the first schedule of the Indian Tariff Act, 1934.

27(4) Kerosene; also any mineral oil other than. kerosene and motor spirit which has its flashing point below one hundred degrees of Fahrenheit''s thermometer by Abel''s close test. Revenue Three annas per imperial gallon.

27(5) Mineral oil, not included in item No. 27(4) or item No. 27(6) which is suitable for use as an illuminant in wick lamps. Revenue .. Three annas per imperial gallon.

27(6) Motor Spirit Revenue .. The rate at which excise duty is for the time being leviable on motor spirit.

27(7) Mineral Oil- (a) Which has its flashing point at or above two hundred degrees of Fahrenheit''s thermometer, and is ordinarily used for the batching of jute or other fibre; Revenue .. Rs. 18-12 per ton

(b) Which has its flashing point at or above one hundred and fifty degrees of Fahrenheit''s thermometer, is not suitable for use as an illuminant in wick lamps, and is such as is not ordinarily used except as fuel or for adme sanitary or hygienic purposes. Revenue 15 per cent, ad valorem.

Tariff values. per ton. Furnace oil, naked, 85 0 0 in bulk. Revenue

27(8) Lubricating oil, that is, oil such as is not ordinarily used for any other purpose than lubrication, excluding any mineral oil which has its flashing point below two hundred degrees of Fahrenheit''s theremometer by Abel''s close test. Revenue .. Two annas and six pies per imperial gallon.

27(3) All sort of mineral oil not otherwise specified. Transformer oil, in- 3 12 0 eluding transil and switch oil other than that assessed to duty under the proviso to item No. 72(3) of the first schedule of the Indian Tariff Act, 1934. 10 per cent ad valorem.

27(4) Kerosene; also any mineral oil other than kerosene and motor spirit which has its flashing point below one hundred degrees of Fahrenheit''s thermometer by Abel''s close test. Kerosene 2 annas and 3 pies per imperial gallon.

27(5) Mineral oil, not included in item. No. 27(4) or item No. 27(6) which is suitable for use as an illuminant in wick lamps. ..

27(6) Motor Spirit

27(7) Mineral oil-

(a) Which has its flashing point at or above two hundred degrees of Fahrenheit''s thermometer, and is ordinarily used for the batching of jute or other fibre; Free

(b) Which has its flashing point at or above one hundred and fifty degrees of Fahrenheit''s thermometer, is not suitable for use as an illuminant in wick lamps, and is such as is not ordinarily used except as fuel or for adme sanitary or hygienic purposes. Free

Tariff values. per ton. Furnace oil, naked, in 85 0 0 bulk.

27(8) Lubricatig oil, that is oil such as is not ordinarily used for any other purpose than lubrication, excluding any mineral oil which has its flashing point below two hundred degrees of Fahrenheit''s thermometer by Abel''s close teat. Free

79. Therefore, it will be noticed that unless the oil in question does not fall within item 27(8) on the basis of tests laid down therein, it cannot fall within the residuary item 27(3) of the Act.

80. The relevant portion of the three specifications for spindle oil of the Indian Stores Department is as follows:

81. No. G/ 0-101/1-Oil, spindle, extra light, for instruments, typewriters and very light mechanisms generally.

82. The oil shall comply with the following requirements:

Specific gravity at 30?C / 30?C-Not above 950.

Closed flash point (Pensky-Martens)-Not below 150?C.

Setting point (I.P.T. method)-Not above 0?C.

Viscosity (Redwood) at 40?C-60 to 80 Sees.

No. G/0-101/2-Oil, spindle, light, for electric dynamos and motors up to 2 1/2 H.P.

The oil shall comply with the following requirements: Specific gravity at 30''o/30?C-Not above 915.

Closed flash point (PenskynMartens)-''Not below 150?C. Setting point (I.P.T. method)-Not above 0?C. Viscosity (Redwood) at 40 0 C-05 to 115 sees.

The oil shall comply with the following requirements:

Specific gravity at 30?C/3O?C-Not above 920.

Closed flash point (Pensky-Martens)-Not below 160?C-

Setting point (I.P.T. method)-Not above 0? C.

Viscosity (Redwood) at 40?C-130 to 150 sees.

83. It may be noticed that in the case of extra light spindle oil and light spindle oil, the flash point should be "not below 150?C "in closed flash point (Pensky-Martens) or not below 302?F". In this case of the third kind of spindle oil the flash point should be "not below 160?C in closed flash point (Pensky-Martens) or nol "below 312?F."

84. The Plaintiff called more than one Chemist to support their case that the chemical examination demonstrate that the oil imported by them was spindle oil according to item No. 27(8). His Lordship then proceeded to discuss the evidence-Ed.)

85. The standard laid down for flashing in the Indian Stores Department specification is not the same as in item No. 27(8). In the case of Indian Stores Department specification the flashing point must be 150? C or 302?F or above by Close Pensky method. In item 27(8) the flashing point must be 200? or above Fahrenheit''s thermomter by Abel''s close test. Therefore, the Legislature deliberately departed from the Indian Stores Department specification in item 27(8). Hence there is no good ground whatsoever to adopt the flashing point prescribed by the Indian Stores Department in preference to the flashing point enjoined upon the Customs Department by item 27(8) itself. Therefore, the Customs Department disregarded or flouted the statutory provision in item 27(8) when it eliminated the oil from the category of item 27(8) and placed it in the residuary item 27(3).

86. In this connection it may be noted that all the Chemists were unanimous in so far as they said that they examined samples in the Close Pensky method. They said that for such temperature namely 200? or above Abel''s close test is not a suitable method. In any event, it is clear from the evidence that Abel''s closed test is not resorted to by the Chemists in India. There is however evidence that the difference between the Close Pensky test and Abel''s close test is only a few degrees. At the outside the difference would be 8? or 10?. Therefore, I have no hesitation in acting on the Close Pensky test. More so, because neither party took objection on the ground than the Abel''s close test was not adopted in this ease.

87. In view of the evidence of the Chemists, in my opinion, there is room for amendment of the item with regard to Abel''s close test.

88. If objection had been taken by any of the parties on the ground that the flash point was not ascertained by the Abel''s close test, then in my opinion, such objection could be upheld.

89. The Legislature preferred to have the flash point determined by the Abel''s close test in preference to other methods. The Customs Department is bound to examine the oil by Abel''s close test before it can eliminate 27(8) and assess under item 27(3). When this has not been done, there was no basis for assessing the oil under 27(3). Hence again the categorization under 27(3) is contrary to and in violation of the statutory provision.

90. In The Secretary of State v. Mash and Company (1940) L.R. 67 IndAp 222, 236, their Lordships of the Privy Council observed inter alia as follows:

91. It is settled law that the exclusion of the jurisdiction of the Civil Courts has not to be readily inferred but that such exclusion must either be explicitely expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into causes whether the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

92. Therefore, having regard to my finding that the Customs Department did not comply with the provision made in item 27(8) before assessing the goods under item 27(3), the order of assesment dated March 16, 1950 attracts the principle "that the Civil "Court has jurisdiction to examine into causes whether the provisions of the Act have not been complied with" as laid down; in the above Privy Council cases.

93. The above finding does not give a go-by to the view expressed by me in the previous two cases Ludlow Jute Mills Ltd. v. The Union of India Unreported and Hoare Miller and Company v. The Union of India (1961) 65 O.W.N. 1206.

94. The changed circumstances to wit the laying down by the Legislature in one of the competing items, the tests for determining whether a particular commodity falls within the item circumscribes the power or authority of the Customs Officer to move freely within his exclusive province of assessment (for he is enjoined by the statute to test the goods in the prescribed manner,) has however repurcussion on the views expressed in the two previous cases.

95. If the Customs Officer complies with the statutory tests the assessment is beyond the reach of the Civil Court for he is exercising jurisdiction in his province of assessment in accordance with the provisions of the Act. If, however, the Customs Officer ignores or fails to comply with the statutory tests he acts irregularly in the exercise of his jurisdiction and consequently his assessment becomes vulnerable in a Civil Court and the Courtj has jurisdiction to set aside or cancel the assessment.

96. The limited right of the Civil Court to set aside or cancel the assessment does not however confer or by implication give any power to the Civil Court to assess the goods. This matter of assessment still remains the exclusive province of the Customs Authorities.

97. Therefore, subject to the above qualification there is no inconsistency between the two previous cases and the present case.

98. The next question for consideration is whether on the materials before me the oil falls within the category of item 27(8) on the assumption that the Court has jurisdiction to assess.

99. The Customs Department relied on chemical tests in order to eliminate item 27(8).

100. The oils satisfy the requirements of the Indian Stores Department specification except as to flash point. The flash point of 217?F however fulfils the requirement of item 27(8).

101. Mr. Vaswani, the Assistant Commissioner of Appraisement admitted that the oil in question was lubricating oil as understood in the trade. The presumption arising out of the admission has not been displaced.

102. Therefore, even, on the facts I would have been prepared, assuming that it was open to the Court, to hold that the oil wast lubricating oil within the meaning of item 27(8).

103. The only point for consideration is whether the non-production of evidence showing the use of the oil before the Appraiser in terms of the letter, dated March 28, I960 militates against this conclusion.

104. There was very good reason for not producing any evidence showing the use of the oil before the Appraiser. The production of evidence as to user wag consistent with tile attitude the Plaintiff took after the release of the goods.

105. The Plaintiff again did not produce any oral or documentary evidence before me as to whether they disposed of the goods in order to indicate what use the oil was put to or did not produce any evidence to show the use of the oil. Assuming that the evidence of the sales were produced before the Court, the matter would have remained where it lies, for that would not show the user of the oil. Assuming again that the evidence was produced by the Plaintiff in Court showing that the oil was in fact used for purposes other than lubrication, yet in my opinion, the matter would not have stood concluded, for nonetheless, the question for consideration would have been whether such oil is ordinarily used for lubrication. Hence there is no ground for revising the view that the oil attracted item 27(8).

106. The only other point for consideration in this connection is whether the kerosene smell of the oil affects the conclusion that the oil falls under item 27(8). The Appraiser was no doubt affected by the strong smell of kerosene. This strong

smell of kerosene however did not affect the minds of the Chemists or the result of their chemical tests. Therefore, in my opinion, this can have no bearing on the question. Hence again I see no ground for revising the view that the oil attracted item 27(8). The next controversy related, to the effect of the orders made in the application under Article 226 of the Constitution.

107. The relevant portion of the judgment of His Lordship fh(c) Hon''ble Mr. Justice Bose in the application under Article 226 is as follows:

In my view, this petition must succeed in part. The Rule is made absolute to this extent that the orders and demands contained in the letters dated September 22, 1050 and November 17, 1950 and made by the Respondents Nos. 1 and 2 are quashed and cancelled.

108. The Petitioner will be at liberty to file suit or take any other proceeding as it may be advised for discharge or cancellation of the Bond or refund of extra duty paid or for such other reliefs to which the Petitioner is entitled. The Petitioner is entitled to costs of the present proceedings. The Rule as against the Union of India is discharged. The Appeal Court upheld this decision of Mr. Justice Bose.

109. There was no further appeal to the Supreme Court. In the tatter, dated September 22, 1950, the Assistant Collector of Customs for Appraisement wrote to the Plaintiff inter alia as follows:

The oils in question have been finally decided to be assessable under item 27(3) of the Indian Customs Tariff as mineral other sorts.

110. You are accordingly called upon to submit the proper license within a week from date, failing which action will be taken in terms of your Bond, dated 28-3-50.

111. In the letter or order, dated November 17, 1950, the relevant portion is as follows:

112. In this office letter of even number, dated 22-9-50, you were requested to produce the proper licence which you have failed to produce. In terms of the Bond executed by you, you are hereby called upon to pay Rs. 4,65,473-12-0 in the first instance within 14 days hereof.

113. Therefore, when the order and demand contained in the said letter, dated September 22, 1950, was quashed and cancelled, in the eye of the law there was no assessment of the oil under item 27(3) as mineral oil other sorts and there is no question of production of proper license in terms of the Bond.

114. It is now necessary to consider the question of relief for refund of the sum of Rs. 75,925 in view of the above findings that the oil was not properly classified under item 27(3) and that there is no order of assessment under item 27(3) in existence.

115. It was contended on behalf of the Union of India that in view of the fact that

the money had been collected as revenue and become a part of the consolidated fund under Article 226 of the Constitution, the sum of Rs. 75,925 is not recoverable.

116. Article 266 refers to the collection of revenue. The collection of revenue must be under a due legal process. If collection is made in accordance with any provision of an Act, then there cannot be any question of recovery of the same. If collection is made illegally and contrary to the statute, then it cannot be said in my opinion to be a collection of revenue and thus a part of the revenue or the consolidated fund. Hence in "such a case of illegal collection or wrongful exaction, Article 266 cannot be a bar to the recovery of the money collected illegally.

117. It was contended on behalf of the Plaintiff that the sum of Rs. 75,925 was recoverable u/s 712 of the Indian Contract Act.

118. In this case, the Plaintiff, to say the least, was obliged to pay the extra sum of Rs. 75,925 in order to take delivery of the goods and save itself from probable loss though it disputed the correctness of the assessment.

119. Section 72 of the Act is as follows:

A person to whom money has been paid, or anything delivered by mistake or coercion must repay or return it.

120. Illustration (6) of Section 72 of the Contract Act is as follows:

A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

121. There was at one time doubt whether coercion in Section 72 carried the same meaning and effect as in Section 15 of the Contract Act. This controversy, however, was set at rest by the Privy Council in Seth Kanhaialal v. National Bank of India (1913) L.R. 40 I.A. 56, where it was held that the word "Coercion is used in the section in its "general and ordinary sense and is not controlled by Section 15 of the "Act." There was also at one time doubt as to whether Section 72 covered mistake of law. This again was set at rest by a decision of the Supreme Court-Sales Tax Officers v. Kanhailal AIR (1959) S.C. 136.

122. Hence, the sum of Rs. 75,925 is recoverable u/s 72 read with illustration (b) and the Defendant is bound to refund the! same.

123. It is now necessary to consider the question of relief for cancellation of the Bond, dated March 28, 1951.

124. The letter, dated November 17, 1950, from the Collector of Customs to the Plaintiff called upon the Plaintiff to pay the sum of Rs. 4,65,473-12 in terms of the bond within fourteen days from the date thereof as there was no proper

license.

125. The right under the bond was invoked on the basis that the assessment of the oil made by its letter, dated September 22, 1950, was valid and binding on the Plaintiff. The basis for invoking the right under the bond to call upon the Plaintiff tot pay the said sum of Rs. 4,65,473-12, however, disappeared when the assessment under item 27(3) was quashed and cancelled. Be that as it may, this finding may not discharge the Bond.

126. Therefore, it was contended before me that the Bond was invalid and not binding on the Plaintiff as it was executed under duress or coercion. In my opinion it is difficult to hold on the evidence before me that it was under duress as meant u/s 15 of the Indian Contract Act.

127. It was contended before me in the further alternative on behalf of the Plaintiff that the bond was executed under duress or coercion within the meaning of Section 72 of the Indian Contract Act. In my opinion Section 72 relates only to the refund of money or thing and does not relate to any agreement or Bond.

128. Therefore, on this ground it cannot attract Section 72 of the Indian Contract Act though coercion has a wider meaning than coercion u/s 15 of the. Indian Contract Act.

129. There is however a more fundamental objection to the validity of this Bond.

130. The Constitution of India came into force in January, 1950. This Bond was executed on March 28, 1950. In other words, the Bond was executed after the Constitution took its effect.

131. On our giving us our Constitution the office of the Goveraor-General-in-Council disappeared and in its place and stead emerged the office of the President. Therefore, there cannot be in law any Bond in favour of the Governor-General whose office was so to say defunct in January, 1950.

132. In this connection reliance was placed on a decision in The State of The State of Uttar Pradesh Vs. Mohammed Sayeed, .

133. There the surety Bond was executed in favour of His Majesty after the Constitution of India came into force. It was held that such a name was unknown to the Republic of India and there cannot be any Bond in favour of such a person. The relevant observations are as follows:

134. The Bond which the Respondent had executed was to forfeit to the King Emperor a certain sum of money if he made default in procuring the attendance of the accused before the Court. He did not execute a Bond by which he bound himself to forfeit the said sum either to the Government of the Union of India or that of the State of Uttar Pradesh. The bond executed by him in 1953 was a bond unknown to the law of the! Republic of India under the Code of Criminal Procedure at the time of execution.

135. There is the further question whether the Defendant No. 1 had any jurisdiction to require or compel the Plaintiff to execute or deliver the said bond under the Sea Customs Act. Section 137 read with the notification thereunder enables the Customs Department to allow goods to be exported before assessmeat on execution of a Bond. There is no like section so far as imports are concerned.

136. Section 41 of the Sea Customs Act enables the department to have a running account with firms or bodies who habitually import or export goods. This section does not empower the Customs Authorities to allow goods to be exported before assessment on the basis of a Bond.

137. There are specific provisions for bonds under the Sea Customs Act-Sections 92 and 144. The Bond in suit does not fall within their ambit.

138. Hence it appears to me that there is no provision under the Act empowering the Customs Department to obtain such a bond as was executed on March 28, 1950 from an importer. Be that as it may, this point, if I remember right, was not argued before me by either side.

139. In the result I answer the issue as follows:

Issue No. 1: Was the oil in suit lubricating oil within the meaning of item 27(8) of the Indian Customs Tariff Act, 1934?

In my opinion, on the evidence before me the oil was lubricating oil taxable under item 27(8) on the assumptions that the Court had jurisdiction to enter into the arena of assessment.

Issue No. 2: Was the Bond, dated March 28, 1950, executed under duress and/or does it constitute a hard and unconscionable transaction as alleged in the plaint?

The answer is in the negative.

Issue No. 3: Did the Defendant No. 1 have any jurisdiction to require or compel the Plaintiff to execute or deliver the said Bond?

In view of my answer to issue No. 5(c), this issue is answered in the negative. The question whether the Bond, assuming it was entered in favour of the President, was within jurisdiction or not was not canvassed before me.

Issue No. 4: Was the said (Bond duly fulfilled and/or performed and thereby stood discharged and/or cancelled as alleged in para. 11 of the plaint?

In view of my answer to issue No. 5(c), this question does not arise.

Issue No. 5: Had not the Defendant No. 1 power or jurisdiction to impose increased duty or penalty exceeding Rs. 100 as alleged in para. 7 of the plaint?

This issue was not pressed before me.

Issue No. 5(a): Has the Plaintiff any cause of action and is the suit maintainable?

In the facts of this case the suit is not barred by the Sea Customs Act and the Plaintiff is entitled to the refund of the sum of Rs. 75,925.

Issue No. b(b): Is the Plaintiff entitled to refund of the sum of Rs. 75,925-14 in view of the orders made in the application under Article 226 of the Constitution?

The Plaintiff is also entitled to refund of the sum of Rs. 75,925-14 in view of the orders made in the application under Article 226 of the Constitution.

Issue No. 5(c): Was the Bond, dated March 28, 1950, void in view of the Constitution of India?

The Bond is void as it is in favour of the Governor-General-in-Council whose office perished with our giving a Constitution to ourselves.

Issue No. 6: To what relief, if any, is the Plaintiff entitled as against the Defendant Nos. 1, 2 and 3?

140. The Plaintiff did press for not relief against Defendants No. 1 and 2.

141. Therefore, in this view of the matter there will be a decree in favour of the Plaintiff against the Defendant No. 3 only for a sum of Rs. 75,925. There was a demand for interest on March 24, 1952 at the rate of 8 per cent, per annum. I will allow interesfi at the rate of 6 per cent, per annum from April 1, 1952 till realisation on the sum of Rs. 75,925. There will be a declaration that the Bond, dated March 28, 1950, was and is void and/ or unenforceable. The Plaintiff will get the costs of this suit. Certified for two counsel.

142. The period of 3 months is fixed for satisfaction of the decree u/s 82 of the CPC Code.

