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In the result all the questions framed in this case are answered in favour of the appellant. The order passed by the High Court is set aside and the appeal is allowed with costs throughout.

Appeal allowed.

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April 28.

M/S. DALMIA DADRI CEMENT CO. LTD.

v.

THE COMMISSIONER OF INCOME-TAX

(and connected petition)

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, GAJENDRAGADKAR and VIVIAN BOSE JJ.)

Act of State—Covenant between States for merger—Rights of subjects of the Covenanting States—Enforcement in municipal courts of the New State—Income-tax—Concessional rates granted by the Covenanting State—Whether binding on the New State.

The appellant company which was incorporated in 1938 in the erstwhile State of Jind obtained certain concessions from the Ruler of the State under an agreement dated April 1, 1938, which, inter alia, provided that the State was to be allotted certain shares in the company without any payment and as regards income-tax the company was to be assessed at concessional rates. On May 5, 1948, the Ruler of Jind along with the Rulers of seven other States entered into a Covenant for the merger of their territories into one State. Article VI of the Covenant provided, inter alia, that the Ruler of the Covenanting State shall make over the administration of his State to the Rajpramukh of the new State and that all duties and obligations of the Ruler of the Covenanting State shall devolve on the New State and shall be discharged by it. In accordance with that Article the Rajpramukh took over the administration of Jind on August 20, 1948, and immediately after assumption of office promulgated Ordinance No. I of S. 2005, by s. 3 of which all laws in force in the State of Patiala were made applicable *mutatis mutandis* to the territories of the New State and that all laws in force in the Covenanting States stood repealed. On November 24, 1949, the Rajpramukh issued a proclamation accepting the Constitution of India and on April 13, 1950, the New State became a taxable territory of the Union of India.

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The result of the constitutional changes was that the law relating to income-tax applicable to the appellant, for the period prior to August 20, 1948, was that of Jind, for the period August 20, 1948, to April 13, 1950, that of the Patiala Income-tax Act and after April 13, 1950, the Indian Income-tax Act; but the appellant contended that the income-tax should be levied on him as provided in the agreement entered into with the Ruler of Jind, dated April 1, 1938:

Held, (1) that s. 3 of the Ordinance No. 1 of S. 2005 on its true construction extinguished the right to tax concessions conferred on the appellant under the agreement dated April 1, 1938, and that the appellant cannot rely on that agreement after August 20, 1948.

(2) The Covenant dated May 5, 1948, entered into by the Rulers of the States, is in whole and in parts an act of State and Article VI cannot be relied on by the appellant for the enforcement of the rights conferred on him under the agreement with the Ruler of Jind as against the Rajpramukh of the new State.

Per S. R. Das C. J., Venkatarama Aiyar, S. K. Das and Gajendragadkar JJ.—When a treaty is entered into by sovereigns of independent States whereunder sovereignty in territories passes from one to the other, clauses therein providing for the recognition by the new sovereign of the existing rights of the residents of those territories must be regarded as invested with the character of an act of State and no claim based thereon could be enforced in the municipal courts established by the new sovereign unless those rights have been recognised by him.

Secretary of State for India v. *Bai Rajbai*, (1915) L. R. 42 I. A. 229, *Vajasingji Joravarsingji and others* v. *Secretary of State*, (1924) L. R. 51 I. A. 357, *Secretary of State* v. *Sardar Rustam Khan*, (1941) L. R. 68 I. A. 109, *Cook* v. *Sprigg*, [1899] A. C. 572 and *Hoani Te Heuheu Tukino* v. *Aotea District Maori Land Board*, [1941] A. C. 308, relied on.

Per Bose J.—International opinion is divided about the effect that a change of sovereignty has on rights to immoveable property and this decision must not be used as a precedent in a case in which rights to immoveable property are concerned.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 230 of 1954. Petition No. 276 of 1953.

Appeal from the judgment and order dated June 7, 1954, of the former Pepsu High Court in Civil Misc. No. 97 of 1953. Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights.

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G. S. Pathak, Veda Vyasa, S. K. Kapur and *J. B. Dadachanji*, for the appellants-petitioners.

H. N. Sanyal, Additional Solicitor-General of India, R. Ganapathi Iyer, Raj Gopal Sastri and *R. H. Dhebar*, for the respondents.

1958. April 28. The judgment of S. R. Das C. J., Venkatarama Aiyar, S. K. Das and Gajendragadkar JJ. was delivered by Venkatarama Aiyar J. Bose J. delivered a separate judgment.

Venkatarama Aiyar J.

VENKATARAMA AIYAR J.—Messrs. Dalmia Dadri Cement Co. Ltd. which is the appellant in Civil Appeal No. 230 of 1954 and the petitioner in Petition No. 276 of 1953, is a public company engaged in the manufacture and sale of cement at a place called Dadri situate in what was once the independent State of Jind. On April 1, 1938, one Shanti Prasad Jain, a promoter of the above company, obtained certain concessions from the Ruler of Jind under an agreement, Ex. A, and as it is this document that forms the basis of the present claim of the appellant, it is necessary to refer to the material terms thereof. Clause (1) of the agreement grants to the licensee, Shanti Prasad Jain, "the sole and exclusive monopoly right of manufacturing cement in the Jind State", and for that purpose he is authorised in Cl. (2) to "win and work all quarries, strata, seams and beds of kankar, rorey, limestone or other like materials". Under Cl. (7), the licence is to last for a period of 25 years with option for successive renewals. Clause (10) requires that a public limited company should be formed before July 21, 1936, to work the concessions, and that it should be registered in the Jind State. Under Cl. (11), the State is to be allotted 6 per cent. cumulative preference shares fully paid up of the face value of rupees one lac and ordinary shares fully paid up of the total face value of Rs. 50,000 without any payment whatsoever. Then there are provisions for the payment of royalty to the State and sale of cement at concession rates to local consumers. Clause (23) is very material for the present dispute, and is as follows:

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"The Company shall be assessed to income-tax in accordance with the State procedure but the rate of income-tax shall always be four per cent. up to a limit of the income of rupees five lacs and five per cent. on such income as is in excess of rupees five lacs....." Clause (24) grants exemption from export, import and other duties excepting octroi. Clause (37) provides for settlement of all disputes between the parties by arbitration.

In accordance with the terms set out above, the appellant company was duly incorporated in the Jind State, and on May 27, 1938, Shanti Prasad Jain executed in its favour a deed agreeing to transfer all "his rights, privileges and obligations" under Ex. A. The appellant claims that it has become in this wise entitled as assignee of the licensee to all the benefits granted under Ex. A. The contention was raised by the respondent that the deed dated May 27, 1938, does not itself purport to assign the rights under the license, Ex. A but merely agrees to do so, and that in the absence of a further deed transferring those rights, the appellant could not claim the rights of assignee. But Cl. (35) expressly provides that "the licensee shall transfer his rights to the proposed Company on its formation", and after the appellant was incorporated, the State had throughout recognised it as the person entitled to the rights and subject to the obligations under the license and realised royalty and levied income-tax in accordance with the provisions of Ex. A. This objection was taken for the first time only in the Writ Petition No. 276 of 1953 in this Court. It is stated for the appellant—and that is not controverted for the respondent—that under the law of Jind State an assignment need not be in writing, and that being so, it is open to us to infer such assignment from the conduct of the parties. We must accordingly decide these cases on the footing that the rights under the license, Ex. A, dated April 1, 1938, had become vested in the appellant by assignment.

On August 15, 1947, India became independent, and on the same date, the Ruler of Jind signed an Instrument of Accession ceding to the Government of India

power to legislate with respect to Defence, External Affairs and Communications. On May 5, 1948, eight of the Rulers of States in East Punjab including Jind entered into a Covenant for the merger of their territories into one State, called the Patiala and East Punjab States Union. For brevity, this State will hereafter be referred to as the Patiala Union. Article VI of the Covenant on which the appellant relies in support of its claim is as follows:

"The Ruler of each Covenanting State shall, as soon as may be practicable, and in any event not later than the 20th August, 1948, make over the administration of his State to the Raj Pramukh; and thereupon,

(a) all rights, authority and jurisdiction belonging to the Ruler which appertain, or are incidental to the Government of the Covenanting State shall vest in the Union and shall hereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the Union and shall be discharged by it;

(c) all the assets and liabilities of the Covenanting State "shall be the assets and liabilities of the Union; and

(d) the military forces, if any, of the Covenanting State shall become the military forces of the Union."

Article X provides that a Constituent Assembly should be formed as early as practicable, and that it should frame a Constitution for the State, and that until the Constitution is so framed, the Rajpramukh is to have power to make and promulgate Ordinances for the peace and good government of the Union. Under Art. XVI, the Union "guarantees either the continuance in service of the permanent members of the public services of each of the Covenanting States on conditions which will be not less advantageous than those on which they were serving on the 1st February, 1948, or the payment of reasonable compensation or retirement or proportionate pension."

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In accordance with Art. VI of the Covenant, the Rajpramukh of the Patiala Union took over the administration of Jind on August 20, 1948, and immediately after assumption of office, he promulgated the Patiala and East Punjab States Union Administration Ordinance No. I of S. 2005. Section 3 of the Ordinance, which is material for the present discussion, is as follows:

"As soon as the administration of any covenanting State has been taken over by the Raj Pramukh as aforesaid all Laws, Ordinances, Acts, Rules, Regulations, Notifications, Hidayate Firman-i-Shahi, having force of law in Patiala State on the date of commencement of this Ordinance shall apply *mutatis mutandis* to the territories of the said State and with effect from that date all laws in force in such Covenanting State immediately before that date shall be repealed:

Provided that proceedings of any nature whatsoever pending on such date in the courts or offices of any such Covenanting State shall, notwithstanding anything contained in this Ordinance or any other Ordinance be disposed of in accordance with the laws governing such proceedings in force for the time being in any such Covenanting State."

This Ordinance came into force on August 20, 1948. On February 5, 1949, it was repealed and replaced by Ordinance No. XVI of S. 2006, s. 3(a) whereof being in the same terms as s. 3 of Ordinance No. I of S. 2005.

Article X(1) of the Covenant provided, as has been mentioned, for the framing of a Constitution for the Union in the manner provided therein. That, however did not materialise, and on November 24, 1949, the Rajpramukh issued a proclamation accepting the Indian Constitution as that of the Patiala Union, and thus, the Union became a Part B State under the Constitution. On April 13, 1950, the Patiala Union accepted the Federal Financial Integration Scheme, and became a taxable territory of the Union of India and the Indian Finance Act, 1950, became applicable to it from April 13, 1950. The position, therefore, is that as regards liability to be assessed to income-tax

which is what we are concerned with in these proceedings, the law applicable to the appellant for the period prior to August 20, 1948, was the income-tax law of Jind, for the period August 20, 1948, to April 13, 1950, the Patiala Income-tax Act, S. 2001, which came into force under Ordinance No. I of S. 2005 and after April 13, 1950, the Indian Income-tax Act.

Civil Appeal No. 230 of 1954 arises out of proceedings for assessment of income-tax for the year 1949-1950. By its order dated November 11, 1952, the Appellate Tribunal has found that the taxable profits of the appellant for the year of account which is the calendar year 1948 was Rs. 1,94,265, and that finding is not now in dispute. The substantial point now in controversy is as to the rate at which tax should be levied on that amount, whether it should be what is enacted in the Patiala Income-tax Act as contended for the respondent, or what is provided in Cl. (23) of the agreement, Ex. A, as claimed by the appellant. On this question, the Appellate Tribunal held that the Patiala Union which was a new State that had come into existence as a result of the Covenant was not bound by the agreements entered into previously by the rulers of the Covenanting States, that the appellant could claim the benefit of that agreement only if the new State chose to recognise it, that there had been, in fact, no such recognition, and that, in consequence, the tax was leviable as prescribed in the Patiala Income-tax Act, S. 2001. On the application of the appellant, the Tribunal referred under s. 66(1) of the Indian Income-tax Act, the following question for the opinion of the High Court:

"Whether the asseessee's profits and gains earned in the calendar year 1948 were assessable for S. 2006 (1949-50) at the rates in force according to the Patiala Income-Tax Act of S. 2001 read with section 3 of the Patiala & East Punjab States Union Administration Ordinance (No. I of S. 2005), as repealed and re-enacted in section 3 of the Patiala & East Punjab States Union General Provisions (Administration) Ordinance (No. XVI of 2006), or in accordance with clause (23) of the agreement of April, 1938 above referred to."

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By their judgment dated June 7, 1954, the learned Judges of the High Court answered the question against the appellant, but granted a certificate under s. 66(A)(2) of the Indian Income-tax Act; and that is how Civil Appeal No. 230 of 1954 comes before us.

Meantime, proceedings were taken by the Income-tax authorities for assessment of tax for years subsequent to 1949-1950, and the dispute again related to the question whether the amount of tax should be determined in accordance with Cl. (23) of Ex. A of the provisions of the Indian Income-tax Act, 1922. The Income-tax Officer, Rohtak, rejected the contention of the appellant that it was liable to pay tax only in accordance with Ex. A and passed orders determining the tax under the provisions of the Indian Income-tax Act for the year 1950-1951 on April 28, 1952, for 1951-1952 on May 12, 1952, and for 1952-1953 on March 17, 1953. Appeals against these orders have been preferred by the appellant, and they are stated to be pending before the Appellate Assistant Commissioner. On the allegation that the tax as imposed in the orders aforesaid is unauthorised, and that it constitutes an unlawful interference with its rights to carry on business guaranteed under Art. 19(1)(g); the appellant has filed Petition No. 276 of 1953 for an appropriate writ directing the respondents to levy tax in accordance with the agreement, Ex. A, dated April 1, 1938. In support of this petition, in addition to the contentions raised in Civil Appeal No. 230 of 1954 the petitioner also urges that even if the Union of India is entitled to repudiate the agreement dated April 1, 1938, it has not, in fact, done so, and that it has, on the other hand, recognised it as good and is therefore not entitled now to go back upon it, and that the levy of tax in accordance with the provisions of the Indian Income-tax Act is accordingly illegal. As the contentions raised in the appeal and in the petition are substantially identical, they were heard together.

Before us, the validity of the assessment of income-tax for the year 1949-1950 was challenged by Mr. Pathak on the following grounds:

(1) Ordinance No. I of S. 2005 under which the Patiala Income-tax Act Act is sought to be applied to the appellant does not, on its true construction, annul the rights granted under Ex. A.

(2) If the Ordinance in question is to be construed as having that effect, then it is in contravention of Art. VI of the Covenant, and is therefore unconstitutional and void.

(3) Even apart from the Covenant, the agreement, Ex. A, is binding on the Patiala Union and the impugned Ordinance is bad as infringing it; and

(4) the Patiala Union had, in fact, recognised the rights granted under Ex. A and it is therefore binding on it, as if it were a contract entered into by itself.

(1) On the first question, the argument of Mr. Pathak is this: The Ruler of Jind was an absolute monarch, and his word was law. The agreement, Ex. A, must therefore be held to be a special law conferring rights on the licensee. Section 3 of Ordinance No. I of S. 2005 is a general provision extending all laws of the State of Patiala to the territories of the Covenanting States. The rule of construction is well established that general statutes should be interpreted so as not to interfere with rights created under special laws. Section 3 of the Ordinance should therefore be construed as not intended to affect the rights conferred under Ex. A. Reliance is placed on the statement of the law in Maxwell's Interpretation of Statutes, 10th Edn., pp. 176 and 180, and on the observations in *Blackpool Corporation* v. *Starr Estate Co.* (1). Now the rule of construction expressed in the maxim *generalia specialibus non derogant* is well settled, and we shall also assume in favour of the appellant that the agreement, Ex. A, is a special law in the nature of a private Act passed by the British Parliament, and that accordingly s. 3 of the Ordinance should not be construed, unless the contrary appears expressly or by necessary implication, as repealing the provisions of Ex. A. But ultimately, the question is what does the language of the enactment mean? Section 3 is quite explicit, and

(1) [1922] 1 A. C. 27, 34.

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it provides that from the date of the commencement of the Ordinance "all laws in force in such Covenanting States immediately before that date shall be repealed", and the proviso further enacts that pending proceedings are to be disposed of in accordance with laws in force for the time being in the Covenanting States. In the face of this language which is clear and unqualified, it is idle to contend that Ordinance No. I of S. 2005 saves the rights of the appellant to the tax concessions under Cl. (23) of Ex. A.

(2) It is next contended by Mr. Pathak that if Ordinance No. I of S. 2005 is to be construed as extinguishing the right to concessions conferred under Ex. A, then it must be held to be unconstitutional and void. This contention is based on Art. VI (b) of the Covenant, which provides that the obligations of the rulers pertaining to or incidental to government of the Covenanting State shall devolve on the Union and be discharged by it. It is argued that the Ruler of Jind had for good and valuable consideration undertaken certain obligations under Cl. (23) of Ex. A with reference to taxation which is a governmental function, that he had himself scrupulously honoured them so long as he was a Ruler, and then passed them on under Art. VI (b) to the new State created under the Covenant, that the Rajpramukh who was a party to the Covenant and claimed under it was bound by that obligation, that his power to enact laws is subject under Art. VI (a) to the obligations mentioned in Art. VI (b), and that the impugned law is, if it is to be construed as having the effect of abrogating those obligations, *ultra vires* his powers under the Covenant and is, in consequence, void. In answer to this, the respondent contends that the Covenant entered into by the rulers is an act of State and that any violation of its terms cannot form the subject of any action in the municipal courts, that the obligations mentioned in Art. VI (b) refer not to liabilities under agreements for which there was special provision in Art. VI (c) but to obligations of the character contemplated by the Instrument of Accession, and that, in any event, the rights granted to the licensee under Ex. A were

terminable by the Ruler of Jind at will, and that, in consequence, if the obligation under Cl. (23) devolved on the Raj Pramukh under Art. VI (b) it did so subject to his rights under Art. VI (a) to terminate it if he so willed, and that, therefore, the impugned law did not violate Art. VI (b).

The question that arises for our decision is whether the Covenant was an act of State. On that, there can be no two opinions. It was a treaty entered into by rulers of independent States, by which they gave up their sovereignty over their respective territories, and vested it in the ruler of a new State. The expression "act of State" is, it is scarcely necessary to say, not limited to hostile action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession. Vide *Vajesingji Joravar Singji and others* v. *Secretary of State* (1) and *Thakur Amar Singji* v. *State of Rajasthan* (2). And on principle, it makes no difference as to the nature of the act, whether it is acquisition of new territory by an existing State or as in the present case, formation of a new State out of territories belonging to *quondam* States. In either case, there is establishment of new sovereignty over the territory in question, and that is an act of State.

Mr. Pathak did not contest the position that the Covenant in so far as it provided for the extinction of the sovereignty of the rulers of the Covenanting States and the establishment of a new State is an act of State. But he contended that it was much more than that, that it was also in the nature of a Constitution for the new State in the sense that it is a law under which all the authorities of the new State including the Raj Pramukh had to act. In support of this contention he referred to Art. X, which provided for the convening of a Constituent Assembly for the framing of the Constitution, and argued that the Articles of the Covenant which provided for the administration of the State by the Rajpramukh were in the nature of an interim

(1) (1924) L. R. 51 I. A. 357, 360. (2) [1955] 2 S.C.R. 303, 335.

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Constitution. He also relied on Art. XVI, which guaranteed the rights of the permanent members of the public services in the Covenanting States to continuance in service, and contended that this could not be regarded as an act of State but only as a law relating to the administration of the new State. In this view of the Covenant, he argued, Art. VI must be held to be a constitutional provision enacted for the protection of private rights, that it was, in consequence, binding on the ruler of the new State, and that the municipal courts were competent to grant appropriate reliefs for the breach thereof.

This argument proceeds, in our view, on a misconception as to what is an act of state and what is a law of the State conferring rights on the subject, or, as the learned counsel for the appellant termed it, Constitution of the State. When the sovereign of a State—meaning by that expression, the authority in which the sovereignty of the State is vested, enacts a law which creates, declares or recognises rights in the subjects, any infraction of those rights would be actionable in the courts of that State even when that infraction is by the State acting through its officers. It would be no defence to that action that the act complained of is an act of state, because as between the sovereign and his subjects there is no such thing as an act of state, and it is incumbent on his officers to show that their action which is under challenge is within the authority conferred on them by law. Altogether different considerations arise when the act of the sovereign has reference not to the rights of his subjects but to acquisition of territories belonging to another sovereign. That is a matter between independent sovereigns, and any dispute arising therefrom must be settled by recourse not to municipal law of either States but to diplomatic action, and that failing, to force. That is an act of state pure and simple, and that is its character until the process of acquisition is completed by conquest or cession. Now, the status of the residents of the territories which are thus acquired is that until acquisition is completed as aforesaid they are the subjects of the ex-sovereign of those territories

and thereafter they become the subjects of the new sovereign. It is also well established that in the new set-up these residents do not carry with them the rights which they possessed as subjects of the ex-sovereign, and that as subjects of the new sovereign, they have only such rights as are granted or recognised by him. Vide *Secretary of State for India* v. *Bai Rajbai* (1), *Vajesingji Joravar Singji and others* v. *Secretary of State* (2), *Secretary of State* v. *Sardar Rustam Khan* (3) and *Asrar Ahmed* v. *Durgah Committee, Ajmer* (4). In law, therefore, the process of acquisition of new territories is one continuous act of state terminating on the assumption of sovereign powers *de jure* over them by the new sovereign and it is only thereafter that rights accrue to the residents of those territories as subjects of that sovereign. In other words, as regards the residents of territories which come under the dominion of a new sovereign, the right of citizenship commences when the act of state terminates and the two therefore cannot co-exist.

It follows from this that no act done or declaration made by the new sovereign prior to his assumption of sovereign powers over acquired territories can *quoad* the residents of those territories be regarded as having the character of a law conferring on them rights such as could be agitated in his courts. In accordance with this principle, it has been held over and over again that clauses in a treaty entered into by independent rulers providing for the recognition of the rights of the subjects of the ex-sovereign are incapable of enforcement in the courts of the new sovereign. In *Cook* v. *Sprigg* (5), the facts were that the ruler of Pondoland in Africa had granted certain concessions in favour of the appellants and subsequently ceded those territories to the British Government. The latter having declined to recognise those concessions, the appellants sued for a declaration of their rights thereunder, and the question was whether they had a right of action in respect of what was an act of State. One of the contentions

(1) (1915) L.R. 42 I.A. 229. (2) (1924) L.R. 51 I.A. 357, 360.
(3) (1941) L.R. 68 I.A. 109. (4) A.I.R. 1947 P.C. 1.
(5) [1899] A.C. 572, 578.

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urged on their behalf was that the ruler of Pondoland had at the time of cession of his territories expressed his desire to the British Government that the concessions in favour of the appellants should be recognised and that, in consequence, the appellants had the right to enforce them against the new Government. In rejecting this contention, the Lord Chancellor observed:

"The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of state and treating Sigcau as an independent sovereign—which the appellants are compelled to do in deriving title from him. It is a well-established principle of law that the transactions of independent States between each other are governed by other laws than those which municipal courts administer."

"It is no answer to say that by the ordinary principles of international law private property is respected by the sovereign which accepts the cession and assumes the duties and legal obligations of the former sovereign with respect to such private property within the ceded territory. All that can be properly meant by such a proposition is that according to the well-understood rules of international law a change of sovereignty by cession ought not to affect private property, but no municipal tribunal has authority to enforce such an obligation. And if there is either an express or a well-understood bargain between the ceding potentate and the Government to which the cession is made that private property shall be respected, that is only a bargain which can be enforced by sovereign against the sovereign in the ordinary course of diplomatic pressure."

In *Vajesingji Joravarsingji and others* v. *Secretary of State for India* (1), the dispute related to the title of the appellants to certain lands situated in the Panch Mahals. This area formed at one time part of the dominion of the Scindias of Gwalior, and it was ceded to the British Government by treaty on December 12, 1860. Clauses (2) and (3) of the treaty provided for

(1) (1924) L.R. 51 I.A. 357, 360.

the recognition by the new sovereign of rights of the residents under existing leases, jagirs and the like. The complaint of the appellants was that in 1907 the British Government had proposed to lease the lands to them on terms which infringed their proprietary rights, and that this was in violation of the rights which had been guaranteed under Cls. (2) and (3) of the treaty, and was, in consequence, bad. The answer of the Government was that the treaty in question was an act of state and conferred no rights on the appellants. In upholding this contention, Lord Dunedin observed:

"When a territory is acquired by a sovereign state for the first time that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing. Nay more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties."

In *Hoani Te Heuheu Tukino* v. *Aotea District Maori Land Board* (1), the question arose with reference to the Treaty of Waitangi entered into by the British Government with the native chiefs of New Zealand in 1840. Under cl. (1) of the Treaty, there was a complete cession by the chiefs of all their rights and powers of sovereignty. Clause (2) guaranteed to the chiefs, the tribes and the respective families and individuals certain rights in lands, forests and fisheries. In 1935, the Legislature of New Zealand enacted a law, the provisions of which were impugned as *ultra vires* on the ground that they infrigned the rights

(1) [1941] A.C. 308.

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protected by cl. (2) of the Treaty of Waitangi. In holding that the rights under the Treaty furnished no ground for action in the civil courts, Viscount Simon L. C. referred to the decision in *Vajesingji Joravar Singji and others* v. *Secretary of State* (1) and observed:

"So far as the appellant invokes the assistance of the court, it is clear that he cannot rest his claim on the Treaty of Waitangi, and that he must refer the court to some statutory recognition of the right claimed by him."

The result of the authorities then is that when a treaty is entered into by sovereigns of independent States whereunder sovereignty in territories passes from one to the other, clauses therein providing for the recognition by the new sovereign of the existing rights of the residents of those territories must be regarded as invested with the character of an act of state and no claim based thereon could be enforced in a court of law. It must follow from this that the Covenant in question entered into by the rulers of the Covenanting States is in its entirety an act of state, and that Art. VI therein cannot operate to confer on the appellant any right as against the Patiala Union. This conclusion becomes all the more impregnable when it is remembered that the Covenant was signed by the rulers on May 5, 1948, whereas the new state came into being only on August 20, 1948. In the decisions cited above, the sovereign against whom the obligations created by the treaty were sought to be enforced was the very sovereign who entered into that treaty or his successor. But here, the ruler of the Patiala Union against whom Art. VI is sought to be enforced was not a party to the Covenant at all, because that State had not come into existence on that date. The person who signed the Covenant was the ruler of the State of Patiala which was one of the Covenanting States, but that State as well as the seven other States which entered into the Covenant stood all of them dissolved on August 20, 1948, when the new Patiala Union came into being. The new State could not and did not enter into any covenant before August 20, 1948, and therefore, in strictness, it cannot be

(1) (1924) L.R. 51 I. A. 357, 360.

held to be bound by Art. VI, to which it was not a party.

Considerable emphasis was laid for the appellant on Art. XVI of the Covenant under which the Union guaranteed the continuance of the service of permanent members of public services, and this was relied on as showing that the rights of the subjects of the *quondam* States were intended to be protected. This argument is sufficiently answered by what we have already observed, namely, that a clause in a treaty between high contracting parties does not confer any right on the subjects which could be made the subject-matter of action in the courts, and that the Patiala Union is not bound by it, because it was not a party to the Covenant. It should, however, be mentioned that after the formation of the new State on August 20, 1948, the first legislative act of the sovereign was the promulgation of Ordinance No. I of S. 2005, and s. 4 thereof expressly recognises the rights of the permanent members of public services. That undoubtedly is a law enacted by the sovereign conferring rights on his subjects and enforceable in a court of law, but at the same time the enactment of such a law serves to emphasise that the Articles have not in themselves the force of law and were not intended to create or recognise rights. In this connection, reference should also be made to cl. XVI of the Ordinance which enacts that " the provisions of articles XV and XVII of the Covenant relating to the bar of certain suits and proceedings shall have the force of law."

In support of his contention that Art. VI of the Covenant is to be regarded as a Constitutional provision, counsel for the appellant relied on certain passages in the judgment of this Court in *Thakur Amar Singhji* v. *State of Rajasthan* (1) at pp. 313 and 315 wherein a similar covenant entered into by the rulers of Rajasthan was described as a Constitution. Apart from the use of the word " Constitution ", we find nothing in these passages which has any bearing on the point now under consideration. There, the question was as regards the *vires* of a law enacted by

(1) [1955] 2 S.C.R. 303.

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the Rajpramukh of Rajasthan, and that depended on whether he was the authority in whom the legislative authority of the State was vested within Art. 385. This Court held that under the Covenant it was the Rajpramukh who had the power to enact laws, and that the Ordinance issued by him was therefore valid, and it was in that context that the covenant was referred to as a Constitution. We had not to consider there the question whether the Covenant was an act of state, or whether it was a law conferring on the citizens of the defunct States rights which were enforceable in a court of law. No such question arose for decision, and therefore the description of the Covenant as a Constitution cannot be read as importing a decision that it is a law conferring rights and not an act of state. In the result, we hold that the Covenant is in whole and in parts an act of state, that Art. VI therein does not operate to confer any rights on the subjects of the Covenanting States as against the sovereign of the new State constituted thereunder, and that Ordinance No. I of S. 2005 is, in consequence, not open to attack as being a violation of Art. VI.

(3) We shall now consider the contention of the appellant that even apart from Art. VI of the Covenant, the impugned Ordinance No. I of S. 2005 is bad in so far as it annuls rights granted by the Ruler of Jind under the agreement dated April 1, 1938. It was argued that Ex. A was not a mere concession which could be withdrawn by the sovereign at his will and pleasure, but that it was an agreement entered into for valuable consideration and creating mutual rights and obligations, that the appellant had, acting on the agreement, allotted to the State shares of the value of Rs. 1,50,000 without payment and had incurred considerable expense in working the concessions, and that, therefore, it was not open to the Patiala Union to go back upon it. The decisions in *The Piqua Branch of the State Bank of Ohio* v. *Knoop* (1) and *Home of the Friendless* v. *Rouse* (2) were relied on as authorities for the proposition that a State is not competent to revoke a grant made by it for consideration.

(1) (1853) 14 L. Ed. 977. (2) (1869) 19 L. Ed. 495.

In *The Piqua Branch of the State Bank of Ohio* v. *Knoop* (1), a law of the State of Ohio of the year 1845 had provided for the incorporation of Banks and it contained provisions as to the taxes payable by them to the State and the mode of payment. In 1851 another Act was passed, the effect of which was to increase the tax payable and the validity of this Act was questioned by a Bank incorporated under the Act of 1845. It was held by the majority of the Court that the Act of 1845 was a legislative contract, and that the State Legislature was not competent to impair the rights which had been acquired under that contract. In *Home of the Friendless* v. *Rouse* (2), a Society called the Home of the Friendless was established under a charter granted by the State of Missouri. The charter had provided that the properties of the Society shall be exempt from taxation. Subsequently, the State proposed to withdraw the concession and impose tax. It was held by the Supreme Court of the United States that the charter was a contract entered into between the State and the Society, and that there was no power in the State to go behind it.

Now, it should be observed that the decisions cited above were given on S. 10 of Art. 1 of the American Constitution that " no State shall pass a law impairing the obligations of contracts ". There is, in our Constitution, no similar provision protecting contractual rights, and it would therefore be unsafe to rely on American authorities in deciding on the validity of legislation which interferes with rights under contracts. And moreover, we are dealing with a contract entered into by a sovereign, whose powers were not subject to any constitutional limitation, and whose word was, as contended for the appellant, law. But apart from this, there is an obvious reason why the above decisions have no application to the present controversy. The point for decision there was whether a State which had entered into a contract with its subjects conferring rights on them was entitled to enact a law abridging or abrogating those rights,

(1) (1853) 14 L. Ed. 977. (2) (1869) 19 L. Ed. 495.

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and the answer was in the negative. But here, the impugned law is that of the Patiala Union and the contract which it affects is not a contract entered into by it but by the Ruler of Jind and unless it can be established that the obligations of the Ruler have devolved on the sovereign of the Patiala Union, the question whether he could repudiate obligations undertaken by him cannot arise. That would have arisen for consideration if Art. VI had the effect of imposing obligations on him. But on our finding that that is not its effect, there is no scope for the contention that the impugned Ordinance is bad as involving breach of contractual obligations, which were entered into by the Patiala Union, or which devolved on it.

(4) Lastly, we have to deal with the contention of Mr. Pathak that the Patiala Union had affirmed the agreement, Ex. A, that, in consequence, it was bound by it as if it had itself entered into it, and that the liability of the appellant to income-tax should therefore be determined in accordance with Cl. (23) thereof. This contention would be irrefragable if the Patiala Union had, as a fact, affirmed the agreement. But has that been established? It has been already observed that the rights of the appellant under Ex. A would become enforceable only if the new State had accorded recognition to them, and what is requisite, therefore, is a declaration or conduct of the Patiala Union subsequent to its formation which could be regarded as amounting to affirmation of Ex. A. Of that, there is no evidence whatsoever. On the other hand, the first act of the Rajpramukh after assumption of office by him was the promulgation of Ordinance No. I of S. 2005, the effect of which was to sweep away the rights of the appellant under Cl. (23) of Ex. A. It was argued that Art. VI of the Covenant would at least be valuable evidence from which affirmance of those rights could be inferred. That is so; but that inference must relate to act or conduct of the new State, and that can only be after its formation on August 20, 1948. If there were any acts of the new State which were equivocal in character, it would have been possible to hold in the light of Art. VI of the

Covenant that its intention was to affirm the concessions in Cl. (23) of Ex. A. But the act of the new sovereign immediately after he became *in titulo* was the application of the Patiala State laws including the Patiala Income-tax Act to the territories of Jind involving negation of those rights. It was said that the levy of income-tax for 1948-1949 was made in accordance with Ex. A, but that relates to a period anterior to the formation of the new State and is within the saving enacted in the proviso to s. 3 of the Ordinance. The appellant has failed to substantiate his plea that there has been affirmance of Cl. (23) of Ex. A by the Patiala State Union, and this point also must be found against it.

All the contentions urged in support of the appeal fail, and it must therefore be dismissed with costs.

Coming next to Petition No. 276 of 1953, in addition to the contentions already dealt with, the petitioner urged that whatever its rights under the law prior to the Constitution, when once it came into force it conferred on the citizens certain fundamental rights, that the tax concessions which the petitioner had under the agreement, Ex. A, were rights to property and they were protected by Art. 19(1)(f), and that it was entitled to seek redress under Art. 32 of the Constitution when those rights were violated. The decision in *Virendra Singh and others* v. *The State of Uttar Pradesh* (1) is relied on in support of this position. This argument assumes that there were in existence at the date when the Constitution came into force, some rights in the petitioner which are capable of being protected by Art. 19(1)(f). But in the view which we have taken that the concessions under Cl. (23) of Ex. A came to an end when Ordinance No. I of S. 2005 was promulgated, the petitioner had no rights subsisting on the date of the Constitution and therefore there was nothing on which the guarantees enacted in Art. 19(1)(f) could operate. The petition must therefore be dismissed on this short ground. In this view, it is unnecessary to express any opinion on the soundness of the contention based on Art. 295 which was

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urged in support of the petition, or on the scope of Art. 363. The petitioner will pay the costs of the respondents.

BOSE J.—I agree, but want to reserve my opinion on a point that does not arise here but which the *ratio* of my learned brother's judgment will cover unless the reservation that I make is set out.

If I judge aright, international opinion is divided about the effect that a change of sovereignty has on rights to immoveable property. The English authorities hold that *all* rights to property, including those in real estate, are lost when a new sovereign takes over except in so far as the new sovereign chooses to recognise them or confer new rights in them. But that, I gather, is not the view of the International Court of Justice. According to one of its opinions, which I have quoted at p. 426 of *Virendra Singh* v. *State of Uttar Pradesh* (1):

"private rights acquired under existing law do not cease on a change of sovereignty."

Certain American cases take the same view though they can be distinguished on the facts. But this view, as I understand it, does not extend to personal rights, such as those based on contract, nor, in any event, does the new sovereign assume any *obligations* of the old State in the absence of express agreement. I have referred to this at p. 427. In any event, whether I am right in thinking that that is what I might call the international view, I would agree that for our country that is, and should be, the law so far as personal rights are concerned.

In the present case, in so far as the right is claimed on the basis of contract, it would fall to the ground on any view; and in so far as it is not founded on contract, it is an obligation that is sought to be fastened on the new State. There is no contract between the new State and the appellant, so there also he is out of court; and even if there was some agreement or understanding between the high contracting parties, it cannot be enquired into, or enforced, by the municipal

(1) [1955] 1 S. C. R. 415.

courts of the new State. So I agree that, so far as this case is concerned, the appellant must fail.

But my learned brother's judgment is grounded to a large extent on the views of the English courts which do not draw the distinction that I am drawing here. I therefore want to make it clear that this decision must not be used as a precedent in a case in which rights to immoveable property are concerned. Without in any way committing myself to one view or the other, as at present advised, I feel it may be a pity for us to disregard the trend of modern international thought and continue to follow a line of decisions based on the views of an older Imperialism, when we are not bound by them and are free to mould our own laws in the light of modern thought and conceptions about rights to and in immoveable property. But in so far as the present case is concerned, I agree that the appeal and the petition under Art. 32 should both be dismissed.

Appeal and petition dismissed.

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