ment prescribed by the proviso constitutes a condition precedent for the exercise of the authority conferred on the Income-tax Officer by s. 34(1A) and since that requirement is not shown to have been satisfied in his case, the appellant in C.A. No. 589 of 1963 must succeed even if s. 34(1A) is held to be valid. We are not impressed by this argument. What was urged before the High Court by the appellant was not that no reasons had been recorded by the Income-tax Officer as required by the proviso; the argument was that the appellant had not been given a copy of the said reasons and it appears to have been urged that the appellant was entitled to have such a copy. This latter part of the case has not been pressed before us by Mr. Setalvad, and rightly. Now, when we look at the pleadings of the parties, it is clear that it was assumed by the appellant that reasons had been recorded and in fact, it was positively affirmed by the respondent that they had been so recorded; the controversy being, if the reasons are recorded, is the assessee entitled to have a copy of those reasons? Therefore, we do not see how Mr. Setalvad can suggest that no reasons had in fact been recorded, and so, the condition precedent prescribed by the proviso had not been complied with.

The result is, all the Civil Appeals and Writ Petitions in this group fail and are dismissed. There would be no order as to costs.

Appeals and Writ Petitions dismissed.

MEMON ABDUL KARIM HAJI TAYAB

v.

DEPUTY CUSTODIAN GENERAL, NEW DELHI AND OTHERS

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(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Evacuee Property—Money deposited with an Indian by a person who migrated to Pakistan—Liability to pay that amount to the Custodian—Administration of Evacuee Property Act, 1950 (31 of

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1950) *Amended s.* 48 (*Act No.* 91 *of* 1956)—*Limitation Act,* 1908 (9 *of* 1908), *Art.* 60.

Rupees 85,000/- was deposited with the appellant by his sister in January 1946. The appellant's sister migrated to Pakistan sometimes between June to August 1949. The Assistant Custodian called upon the appellant to pay this sum lying in deposit under s. 48 of the Administration of Evacuee Property Act, 1950. The appellant pleaded that the amount could not be recovered from him because the money had been given to him as a loan and its recovery was barred in January 1949. The Assistant Custodian rejected the contention of the appellant and directed him to pay the amount under s. 48 of the Act, as it then stood. This decision was affirmed in appeal as well as in revision. Then the appellant moved a writ petition before the High Court which was dismissed by the single Judge. On Latters Patent Appeal the High Court held that the amount was not recoverable under s. 48 of the Act as it stood at the relevant time. This decision was given on December 9, 1957. In the meantime, s. 48 had been amended on October 22, 1956. On January 22, 1958 another notice of demand was served on the appellant by the Assistant Custodian. The Assistant Custodian again directed the amount to be recovered. The appellant preferred an appeal before the Custodian-General. The Custodian-General allowed the appeal and remanded the proceedings for further enquiry as directed by him. After the remand further evidence was taken and it was held that the amount in question was payable by the appellant as it was a deposit and was still recoverable when the property vested in the Custodian. Thereupon the appellant preferred an appeal to the Custodian-General and that appeal was dismissed. Then the appellant applied to this Court for special leave which was granted. Hence the appeal.

Held: (i) Sub-ss. 1 and 2 of the amended s. 48 of the Administration of Evacuee Property Act are clearly procedural and would apply to all cases which have to be investigated in accordance therewith after October 22, 1956, even though the claim may have arisen before the amended section was inserted in the Act. It is well-settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date. In the present case when the Assistant Custodian issued notice to the appellant on January 22, 1958, claiming the amount from him, the recovery could be dealt with under sub-ss. (1) and (2) of the amended s. 48, as they are merely procedural provisions.

(ii) In the present case the property which vested in the Custodian was not the actual money in *specie* lying with the appellant who must be treated as a banker with respect to the property with him; on the other hand the property which vested in the Custodian would be the right of the appellant's sister to recover the amount from the appellant

and that would be incorporeal property in the form of an actionable claim. It is in respect of that actionable claim that the Custodian can proceed under s. 48 sub-ss. (1) and (2), to recover the sum payable to him in respect of that property, namely, the actionable claim. The Custodian could not take action under s. 9 by physically seizing the amount because the amount cannot be treated as specific property which is liable to be seized under that section.

(iii) As this amount was a deposit, limitation would run at the earliest from the date of demand and there is no evidence that any demand was made by the appellant's sister for the return of the money before she migrated to Pakistan. Therefore, the period of limitation had not even begun to run on the date the appellant's sister migrated to Pakistan, assuming Art. 60 of the Limitation Act No. 9 of 1908 applied. Consequently the right of the appellant's sister to recover the amount vested in the Custodian and was not barred by limitation at the time when she became an evacuee.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 119 of 1963.

Appeal by special leave from the judgment and order dated January 16, 1961 of the Deputy Custodian-General, New Delhi in Appeal No. 172-A/SUR/1960.

M. C. Setalvad, Atiqur Rehman and *K. L. Hathi*, for the appellant.

C. K. Daphtary, Attorney-General, K. S. Chawla and *B. R. G. K. Achar*, for the respondents.

February 19, 1964. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave against the order of the Deputy Custodian General, and the question involved is whether the appellant is liable to pay Rs. 85,000/- to the Custodian. The matter has a long history behind it which it is necessary to set out in order to understand the point now in dispute in the present appeal. The money in question was deposited with the appellant by his sister as far back as January 1946. The total amount deposited was Rs. 90,000/-, but the appellant's sister took back Rs. 5,000/-, with the result that the balance of Rs. 85,000/- remained deposited with the appellant. The appellant's sister thereafter migrated to Pakistan sometimes between June to August

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1949. Sometime later, the Assistant Custodian General called upon the appellant to pay this sum lying in deposit under s. 48 of the Administration of Evacuee Property Act, No. XXXI of 1950, (hereinafter referred to as the Act). The appellant contested the matter on the ground that the money had been given to him as a loan and its recovery was barred in January 1949 long before his sister had migrated to Pakistan, and therefore the amount could not be recovered from him. The Assistant Custodian however directed the recovery of the amount as arrears of land revenue under s. 48 of the Act, as it then stood. The matter was taken in appeal before the Custodian, Saurashtra, but the appeal failed. The appellant then went in revision to the Custodian General, and the revision also failed. Then followed a writ petition by the appellant before the Saurashtra High Court in 1955. The writ petition was dismissed by a learned Single Judge; but on Letters Patent Appeal the appellant succeeded, the High Court holding that the amount was not recoverable under s. 48 of the Act as it stood at the relevant time. This decision was given on December 9, 1957. In the meantime, s. 48 had been amended on October 22, 1956 and we shall refer to this amendment in due course.

After the appellant had succeeded in the High Court, another notice of demand was served on him by the Assistant Custodian on January 22, 1958, and after hearing the objections of the appellant, the Assistant Custodian again directed the amount to be recovered. The appellant then took the matter in appeal to the Custodian General. The Custodian General allowed the appeal in August 1958 and remanded the proceedings for further enquiry as directed by him. The Custodian General then held that s. 48 as amended applied to the fresh proceedings which began on the notice issued by the Assistant Custodian in January 1958. He further held that the amount was recoverable under the amended s. 48 provided it was due to the evacuee on the date the property of the evacuee vested in the Custodian. He was therefore of opinion that it would have to be determined when the sister of the appellant migrated and whether the amount was due to her on the date of her migration and had not become barred by the law of limitation on that date. He was further

of opinion that the question whether the transaction amounted to a loan or a deposit had to be determined as there were different periods of limitation for these two types of transactions. He therefore remanded the matter for disposal after finding the facts in accordance with the directions given by him. After the remand further evidence was taken and it was held that the amount in question was payable by the appellant as it was a deposit and was still recoverable when the property vested in the Custodian. Thereupon the appellant again went in appeal to the Custodian General and that appeal was dismissed on February 6, 1961. Then the appellant applied to this Court for special leave which was granted; and that is how the matter has come up before us.

Two questions have been urged before us on behalf of the appellant. The first is whether the amended s. 48 can be applied to the present case. The second is whether the claim of the Custodian is barred even on the basis of the transaction between the appellant and his sister being a deposit and not a loan.

The amended s. 48 came into the Act by Act No. 91 of 1956 from October 22, 1956 and runs as follows:—

> "48. *Recovery of certain sums as arrears of land revenue*:—(1) Any sum payable to the Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise howsoever, may be recovered in the same manner as an arrear of land revenue.
>
> (2) If any question arises whether the sum is payable to the Government or to the Custodian within the meaning of sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal or revision under this Act, be final and shall not be called in question by any court or other authority.

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(3) For the purpose of this section, a sum shall be deemed to be payable to the Custodian notwithstanding that its recovery is barred by the Indian Limitation Act, 1908 (9 of 1908), or any other law for the time being in force relating to limitation of action."

It will be seen that this is mainly a procedural section replacing the earlier s. 48 and lays down that sums payable to the Government or to the Custodian can be recovered thereunder as arrears of land revenue. The section also provides that where there is any dispute as to whether any sum is payable or not to the Custodian or to the Government, the Custodian has to make an inquiry into the matter and give the person raising the dispute an opportunity of being heard and thereafter decide the question. Further, the section makes the decision of the Custodian final subject to any appeal or revision under the Act and not open to question by any court or any other authority. Lastly the section provides that the sum shall be deemed to be payable to the Custodian notwithstanding that its recovery is barred by the Indian Limitation Act or any other law for the time being in force relating to limitation of action. Sub-sections (1) and (2) are clearly procedural and would apply to all cases which have to be investigated in accordance therewith after October 22, 1956, even though the claim may have arisen before the amended section was inserted in the Act. It is well settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date. Therefore, when the Assistant Custodian issued notice to the appellant on January 22, 1958 claiming the amount from him, the recovery could be dealt with under sub-ss. (1) and (2) of the amended s. 48, as they are merely procedural provisions. But it is urged on behalf of the appellant that sub-s. (1) in terms does not apply to the present case, and if so, sub-s. (2) would also not apply. The argument is that under sub-s. (1) it is only any sum payable to the Government or to the Custodian *in respect of* any evacuee property which can be recovered as arrears of land revenue.

Therefore, the argument runs, evacuee property itself cannot be recovered under sub-s. (1), for that sub-section only provides for recovery of any sum payable in respect of any evacuee property. In this connection reference has been made to s. 9 of the Act, which lays down that if any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose. The argument is that the Custodian can only take action for recovery of evacuee property under this section. We are of opinion that the argument is misconceived. Section 9 deals with the recovery of immovable property or specific movable property which can be physically seized; it does not deal with incorporeal evacuee property which may vest in the Custodian and which, for example, may be of the nature of an actionable claim. So far as actionable claims are concerned, they are dealt with by s. 48 as amended read with s. 10 (2) (i). It is also a misconception to think that the amount of Rs. 85,000/- which is involved in this case is actually evacuee property. It is true that under s. 48 as amended, the Custodian can take action for recovery of such sums as may be due in respect of any evacuee property and if the sum of Rs. 85,000/- which was deposited with the appellant is actually evacuee property, the Custodian may not be able to take action under s. 48 (1) and (2) in respect of the same. But the property which vested in the Custodian was not the actual money *in specie* lying with the appellant who must be treated as a banker with respect to the property with him; on the other hand the property which vested in the Custodian would be the right of the appellant's sister to recover the amount from the appellant and that would be incorporeal property in the form of an actionable claim. It is in respect of that actionable claim that the Custodian can proceed under s. 48, sub-ss. (1) and (2), to recover the sum payable to him in respect of that property, namely, the actionable claim. The contention of the appellant that s. 48 (1) will not apply to the recovery of this sum of money must

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therefore fail and the Custodian would have the right to recover this sum of money as it is payable in respect of the evacuee property of the appellant's sister, namely, the right which she had to recover the sum from the appellant, and it is this right which vested in the Custodian. The Custodian could not take action under s. 9 by physically seizing the amount because the amount cannot be treated as specific property which is liable to be seized under that section. If the appellant's sister had the right to recover this amount from the appellant that right would be incorporeal property which would vest in the Custodian and in respect of which action could be taken under s. 48 as amended and not under s. 9 of the Act. The contention of the appellant that s. 48, (1) and (2) do not apply to this case must therefore fail.

The next contention is that in any case treating the amount as a deposit the right to recover it had become barred and therefore the Custodian could not recover it under this section and that sub-s. (3) of s. 48 would not apply as it affects vested rights and is not procedural in nature and therefore could not be applied retrospectively. Some dates would be relevant in this connection. On the findings of the authorities concerned, it appears that the deposit was made sometime in January 1946. The appellant's sister migrated sometimes between June to August 1949. According to the law in force in that area at the relevant time, on the date of migration of the appellant's sister, she became an evacuee and her property would vest in the Custodian on such date. So her right to recover this amount from the appellant would vest in the Custodian sometime between June to August 1949, if it was still alive under the law of limitation, even apart from the question that in such cases only the remedy is barred though the right remains. Further as this was a deposit, limitation would run at the earliest from the date of demand and there is no evidence that any demand was made by the appellant's sister for the return of the money before she migrated to Pakistan. Therefore, the period of limitation had not even begun to run on the date the appellant's sister migrated to Pakistan, assuming art. 60 of the Limitation Act, No. 9 of 1908 applied. Consequently the right of the appel-

lant's sister to recover the amount vested in the Custodian and was not barred by limitation at the time when she became an evacuee. The demand was made for the first time on January 10, 1952 by the Assistant Custodian and time would run from that date, at the earliest.

Then it is urged that even if the actionable claim vested in the Custodian, the demand in this case was made for the first time on January 10, 1952, and therefore under art. 60 of the Limitation Act, the right to recover the amount would be barred in January 1955, and consequently no proceeding could be taken under s. 48 to recover the same after January 1955. It is further urged that the amended Act came into force on October 22, 1956 and sub-s. (3) would only apply to such cases where the limitation had not expired before that date. We do not think it necessary for purposes of the present appeal to decide the effect of sub-s. (3) of s. 48, for the appellant never contested before the authorities concerned that recovery could not be made under s. 48 even if the amount was treated as a deposit. What the appellant had contended before the authorities concerned was that the recovery would be barred as the amount was given to him as a loan. The appellant therefore cannot now for the first time in this Court take the plea that recovery could not be made under s. 48 and sub-s. (3) thereof would not apply even if the amount is treated as a deposit. This contention thus raised in this Court for the first time raises a question as to the effect of sub-s. (3) of s. 48. Besides the effect of s. 48 (3), it is contended for the respondent that if this question had been raised before the proper authorities evidence might have been led to show that the recovery was not barred, for the case proceeded on the assumption that Art. 60 of the Limitation Act applied and proper defences could have been raised as for example the conditions on which the deposit was made *i.e.* whether on demand or otherwise and acknowledgements of liability made by the appellant. Such defence would have raised questions of fact which have never been investigated. Therefore it is urged that the appellant should not be allowed to raise the point that the recovery would be barred even if the amount was treated as a deposit and should be confined to his case

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that this was a loan and not a deposit, for he never pleaded at any time before the authorities concerned that even if it was a deposit the recovery would be barred by time. We are of opinion that there is force in this contention on behalf of the respondents and we are not prepared to allow the appellant to raise the question whether the recovery would be barred even if the amount is treated as a deposit. In this view of the matter, it would not be necessary to consider the exact effect of s. 48(3) and to decide whether it will apply even to cases where the recovery had become barred under the Limitation Act before October 22, 1956. We therefore do not allow the appellant to raise the point that the recovery would be barred even if the amount was a deposit.

The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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February 19.

STATE OF MADHYA PRADESH

v.

BHOPAL SUGAR INDUSTRIES LTD.

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI JJ.)

Equal Protection of Laws—Geographical classification due to historical reasons whether valid—If upheld—Time-limit for adjustments, if possible—Differential treatment—Mere plea not sufficient—Constitution of India, Art. 14—Bhopal State Agricultural Income-tax Act, 1953 (Bhopal Act 11 of 1953).

The respondent, a company incorporated in the former State of Bhopal, presented a petition in August 1960 under Art. 226 of the Constitution in the High Court of Madhya Pradesh for a writ restraining the State of Madhya Pradesh from enforcing the Bhopal State Agricultural Income-tax Act, 1953, claiming that the Act contravened the respondent's right under Art. 14 of the Constitution. By the States Reorganisation Act, 1956 the territory of the State of Bhopal was