As the appellant cannot contend that his acquittal by Mr. Dutta Gupta was an acquittal by a court of competent jurisdiction, he cannot plead s. 403 in support of this appeal. I appreciate that the view that I have taken is hard on the appellant. But it does not seem to me that he was entirely without a remedy. I would have been prepared to give relief to the appellant if he had appealed from the judgment of Chunder J. and for that purpose I would have felt no difficulty in extending the time to appeal. As it is, I feel that the appeal must be dismissed.

ORDER OF COURT.

In accordance with the opinion of the majority the appeal is allowed, the order of the Calcutta High Court directing the complaint to be proceeded within the Court of the Sub-Divisional Magistrate is set aside, and the proceedings against the appellant are quashed.

UNION OF INDIA
v.
AMAR SINGH

(P. B. GAJENDRAGADKAR, K. SUBBA RAO and J. C. SHAH, JJ.)

Contract—Implied contract of bailment—Goods entrusted to Pakistan Railway for delivery in India—Pakistan Railway handing over goods to Indian Railway—Loss of goods—Liability of Indian Railway to consignor—Limitation for suit for compensation for loss —Indian Contract Act, 1872 (IX of 1872), ss. 148 and 194—Indian Limitation Act, 1908 (IX of 1908) Schedule I, arts. 30 and 31.

The respondent booked certain goods on September 4, 1947, with the N. W. Railway at Quetta in Pakistan to New Delhi. The wagon containing the goods was received at the Indian border station of Khem Karan on November 1, 1947, duly sealed and labelled indicating its destination as New Delhi. It reached New Delhi on February 13, 1948, and was unloaded on February 20, 1948, but no immediate information was sent to the respondent. On June 7, 1948, the respondent was asked by the E. P. Railway to take delivery of the goods lying at New Delhi station but when the respondent went there the goods were not traceable. Again, on July 24, 1948, the respondent was asked to take delivery of the goods when only a small portion of the goods

1959

Union of India v. Amar Singh

were offered to him subject to the payment of Rs. 1,067-8-0 as freight but the respondent refused to take delivery. On August 4, 1949, the respondent filed a suit for Rs. 1,62,123 with interest as compensation for non-delivery of goods against the Dominion of India. The trial court found that the E. P. Railway was guilty of negligence in handling the goods and decreed the suit for Rs. 80,000, and on appeal the High Court confirmed the decree. The appellant contended that there was no privity of contract between the respondent and the E. P. Railway and he could only have a claim against the N. W. Railway in Pakistan, and that the suit was barred by limitation.

Held, that there was an implied contract of bailment between the respondent and the E. P. Railway and that Railway was liable for the loss. The conduct of the parties indicated that the respondent delivered the goods to the N. W. Railway with an authority to create the E. P. Railway as his immediate bailee from the point the wagon was put on its rails. The N. W. Railway must be deemed to have had implied authority to appoint the E. P. Railway to act for the consignor during the journey of goods by the E. P. Railway and by force of s. 194 of the Indian Contract Act, the E. P. Railway became an agent of the consignor. The N. W. Railway left the wagon with the E. P. Railway and the latter consciously took over the responsibility of the bailee, carried the wagon to New Delhi and offered to deliver the goods to the respondent. The respondent also accepted this relationship. From these facts, even if an agency could not be implied, a tacit agreement between the two Railways to carry the respondents goods to New Delhi could be implied resulting in a contract of bailment between the E. P. Railway and respondent.

Kulu Ram Maigraj v. *The Madras Railway Company*, I.L.R. 3 Mad. 240, *G.I.P. Railway Co.* v. *Radhakisan Kushaldas*, I.L.R. 5 Bom. 371, *Bristol and Exeter Railway* v. *Collins*, VII H.L.C. 194 and *De Bussche* v. *Alt*, (1878) L.R. 8 Ch. D. 386, referred to.

Held, further that the suit was not barred by limitation. Even if art. 30 of the Indian Limitation Act applied, as contended for by the appellant, the burden was on the appellant, who sought to non-suit the respondent, to establish that the loss occurred beyond one year from the date of the suit. Thus the appellant had failed to establish by any clear evidence.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 478 of 1957.

Appeal from the judgment and decree dated August 17, 1954, of the Punjab High Court, Circuit Bench at Delhi, in Regular First Appeal No. 76 of 1952, arising out of the judgment and decree dated December 15, 1951, of the Court of Sub-Judge, 1st Class, Delhi in Suit No. 169 of 1949/409 of 1950.

Ganapathy Iyer and *D. Gupta*, for the appellant.

Gurbachan Singh and *Harbans Singh*, for the respondent.

1959. October 28. The Judgment of the Court was delivered by

SUBBA RAO J.—This appeal on a certificate granted by the High Court of Judicature for Punjab at Chandigarh is directed against its judgment confirming that of the Subordinate Judge, First class, Delhi, in a suit filed by the respondent against the appellant for the recovery of compensation in respect of non-delivery of goods entrusted by the former to the latter for transit to New Delhi.

On August 15, 1947, India was constituted into two Dominions, India and Pakistan; and soon thereafter civil disturbances broke out in both the Dominions. The respondent and others, who were in government employment at Quetta, found themselves caught in the disturbances and took refuge with their household effects in a government camp. The respondent collected the goods of himself and of sixteen other officers, and on September 4, 1947, booked them at Quetta Railway Station to New Delhi by a passenger train as per parcel way bill No. 317909. Under the said bill the respondent was both the consignor and consignee. The N. W. Railway (hereinafter called the Receiving Railway) ends at the Pakistan frontier and the E. P. Railway (hereinafter called the Forwarding Railway) begins from the point where the other line ends; and the first railway station at the frontier inside the Indian territory is Khem Karan. The wagon containing the goods of the respondent and others, which was duly sealed and labelled indicating its destination as New Delhi, reached Khem Karan from Kasur, Pakistan, before November 1, 1947, and the said wagon was intact and the entries in the "inward summary" tallied with the entries on the labels. Thereafter it travelled on its onward march to Amritsar and reached that place on November 1, 1947. There also the wagon was found to be intact and the label showed that it was bound to New Delhi from Quetta. On November 2, 1947, it reached Ludhiana and remained

1959

Union of India v. Amar Singh

Subba Rao J.

there between November 2, 1947 and January 14, 1948; and the "vehicle summary" showed that the wagon had a label showing that it was going from Lahore to some unknown destination. It is said that the said wagon arrived in the unloading shed at New Delhi on February 13, 1948, and it was unloaded on February 20, 1948; but no immediate information of the said fact was given to the respondent. Indeed, when the respondent made an anxious enquiry by his letter dated February 23, 1948, the Chief Administrative Officer informed him that necessary action would be taken and he would be addressed again on the subject. After further correspondence, on June 7, 1949, the Chief Administrative Officer wrote to the repondent to make arrangements to take delivery of packages lying at New Delhi Station, but when the respondent went there to take delivery of the goods, he was told that the goods were not traceable. On July 24, 1948, the respondent was asked to contact one Mr. Krishan Lal, Assistant Claims Inspector, and take delivery of the goods. Only a few articles, fifteen in number and weighing about 6½ maunds, were offered to him subject to the condition of payment of Rs. 1,067-8 0 on account of freight, and the respondent refused to take delivery of them. After further correspondence, the respondent made a claim against the Forwarding Railway in a sum of Rs. 1,62,123 with interest as compensation for the non-delivery of the goods entrusted to the said Railway, and, as the demand was not complied with, he filed a suit against the Dominion of India in the Court of the Senior Subordinate Judge, Delhi, for recovery of the said amount.

The defendant raised various pleas, both technical and substantive to non-suit the plaintiff. The learned Subordinate Judge raised as many as 15 issues on the pleadings and held that the suit was within time, that the notice issued complied with the provisions of the relevant statutes, that the respondent had *locus standi* to file the suit and that the respondent had made out his claim only to the extent of Rs. 80,000; in the result, the suit was decreed for a sum of Rs. 80,000 with proportionate costs.

The appellant carried the matter on appeal to the High Court of Punjab, which practically accepted all the findings arrived at by the learned Subordinate Judge and dismissed the appeal.

In this Court the appellant questions the correctness of the said decree. Learned Counsel for the appellant raised before us the following points: (1) there was no privity of contract between the respondent and the Forwarding Railway, and if he had any claim it was only against the Receiving Railway; (2) the suit was barred by limitation both under Art. 30 and Art 31 of the Indian Limitation Act and it was not saved by any acknowledgement or acknowledgements of the claim made within s. 19 of the Limitation Act; and (3) the notice given by the respondent under s. 77 of the Indian Railways Act, 1890, did not comply with the provisions of the said section inasmuch as the claim for compensation made thereunder was not preferred within six months from the date of the delivery of the goods for carriage by the Railway.

The third point may be taken up first and disposed of shortly. Before the learned Subordinate Judge it was conceded by the learned Counsel for the defendant that the notice, Ex. P-32, fully satisfied the requirements of s. 77 of the Indian Railways Act, and on that concession it was held that a valid notice under s. 77 of the said Act had been given by the respondent. In the High Court no attempt was made to question the factum of this concession; nor was it questioned by the appellant in its application for special leave. As the question was a mixed one of fact and law, we would not be justified to allow the appellant at this very late stage to reopen the closed matter. We, therefore, reject this contention.

The learned Counsel for the appellant elaborates his first point thus: The Receiving Railway, the argument, proceeds, entered into an agreement with the respondent to carry the goods for consideration to their destination i.e., New Delhi, and in carrying out the terms of the contract it might have employed the agency of the Forwarding Railway, but the consignor was not in any way concerned with it and if loss was

1959

Union of India
v.
Amar Singh

Subba Rao J.

caused to him by the default or neligence of the Receiving Railway, he could only look to it for compensation and he had no cause of action against the Forwarding Railway.

This argument is not a new one but one raised before and the Courts offered different solutions based on the peculiar facts of each case. The decided cases were based upon one or other of the following principles: (i) the Receiving Railway is the agent of the Forwarding Railway; (ii) both the Railways constitute a partnership and each acts as the agent of the other; (iii) the Receiving Railway is the agent of the consignor in entrusting the goods to the Forwarding Railway: an instructive and exhaustive discussion on the said three principles in their application to varying situations is found in *Kulu Ram Maigraj* v. *The Madras Railway Company* (1), *G. I. P. Railway Co.* v. *Radhakisan Khushaldas* (2), and *Bristol And Exeter Railway* v. *Collins* (3); (iv) the Receiving Railway, which is the bailee of the goods, is authorized by the consignor to appoint the Forwarding Railway as a sub-bailee, and, after such appointment, direct relationship of bailment is constituted between the consignor and the sub-bailee; and (v) in the case of through booked traffic the consignor of the goods is given an option under s. 80 of the Indian Railways Act to recover compensation either from the Railway Administration to which the goods are delivered or from the Railway Administration in whose jurisdiction the loss, injury, destruction or deterioration occurs. Some of the aforesaid principles cannot obviously be applied to the present case. The statutory liability under s. 80 of the Indian Railways Act cannot be invoked, as that section applies only to a case of through booked traffic involving two or more Railway Administration in India; whereas in the present case the Receiving Railway is situated in Pakistan and the Forwarding Railway in the Indian territory. India and Pakistan are two independent sovereign powers, and by the doctrine of *lex loci contractus*, s. 80, cannot

(1) I.L.R. 3 Mad. 240. (2) I.L.R. 5 Bom. 371
(3) VII H L.C. 194.

apply beyond the territories of India; nor can the respondent rely upon the first two principles. There is no allegation, much less proof, that there was any treaty arrangement between these two states governing the rights *inter se* in the matter of through booked traffic.

This process of elimination leads us to the consideration of the applicability of principles (iii) and (iv) to the facts of the present case. The problem presented can only be solved by invoking the correct principle of law to mould the relief on the basis of the facts found.

We shall first consider the scope of the fourth principle and its applicability to the facts of this case. Section 72 of the Indian Railways Act says that the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act, 1872. Section 148 of the Indian Contract Act defines "bailment" thus:

> "A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them."

G. W. Patson in the book "Bailment in the Common Law" says, at p. 42, thus:

> "If a bailee of a *res* sub-bails it by authority, then according to the intention of the parties, the third person may become the immediate bailee of the owner, or he may become a sub-bailee of the original bailee".

At p. 44 the learned author illustrates the principle by giving as an example a carrier of goods entrusting them to another carrier for part of the journey. One of the illustrations given by Byles J. in *Bristol And Exeter Railway* v. *Collins* (1) is rather instructive and it

(1) VII H.L.C. 194, 212.

1959

Union of India
v.
Amar Singh

Subba Rao J.

visualises a situation which may be approximated to the present one and it is as follows:

"The carrier receiving the goods may, therefore, for the convenience of the public or his customers, adopt a third species of contract. He may say, "We do not choose to undertake responsibilities for negligence and accidents beyond our limits of carriage, where we have no means of preventing such negligence or accident; and we will not, therefore, undertake the carriage of your goods from A. to B., but we will be carriers as far as our line extends, or our vehicles go, and we will be carriers no further; but to protect you against the inconveniences and trouble to which you might be exposed if we only undertook to carry to the end of our line of carriage, we will undertake to forward the goods by the next carriers, and on so doing our liability shall cease, and our character of carriers shall be at an end; and for the purpose of so forwarding and of saving the trouble of two payments, we will take the whole fare, or you may pay as one charge at the end; but if we receive it we will receive it only as your agents for the purpose of ultimately paying the next carriers."

We may add to the illustration the further fact that the Forwarding Railway is in India, a foreign country in relation to the country in which the Receiving Railway is situate.

Relying upon the said passages, an argument is advanced to the effect that the consignor i.e.., the respondent, authorised his bailee, namely, the Receiving Railway, to entrust the goods to the Forwarding Railway during their transit through India to their destination and the facts disclosed in the case sustain in the said plea. There is no document executed between the respondent and the Receiving Railway whereunder the Receiving Railway was expressly authorized to create the Forwarding Railway the immediate bailee of the owner of the goods. Ex. P-50, the railway receipt dated September 4, 1947, does not expressly confer any such power. But the facts found in the case irresistibly lead to that conclusion. There

was no treaty between the two countries in the matter of through booked traffic; at any rate, none has been placed before us. What we find is only that the Receiving Railway received the goods of the respondent and delivered the wagon containing the said goods to the care of the Forwarding Railway, and the latter took over charge of the wagon, carried it to New Delhi and offered to deliver the goods not lost to the respondent on payment of the railway freight. In the absence of any contract between the two Governments or the Railways, the legal basis on which the conduct of the respondent and the Railways can be sustained is that of the respondent delivered the goods to the Receiving Railway with an authority to create the Forwarding Railway as his immediate bailee from the point the wagon was put on its rails.

The same result could be achieved by approaching the case from a different perspective. Section 194 of the Indian Contract Act says:

> "Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him."

The principle embodied in this section is clearly stated by Thesiger L. J. in *De Buasche* v. *Alt* (1) at p. 310 thus:

> "But the exigencies of business do from time to time render necessary the carrying out of the instructions of a principal by a person other than the agent originally instructed for the purpose, and where that is the case, the reason of the thing requires that the rule should be relaxed, so as, on the one hand, to enable the agent to appoint what has been termed "a sub-agent" or "substitute"; and, on the other hand, to constitute, in the interests and for the protection of the principal, a direct privity of contract between him and such substitute."

The aforesaid facts clearly indicate that the respondent appointed the Receiving Railway as his agent to

1. (1878) L.R. 8 Ch. D. 286, 310.

1959

Union of India
v.
Amar Singh

Subba Rao J.

carry his goods on the railway to a place in India with whom Pakistan had no treaty arrangement in the matter of through booked traffic. In that situation the authority in the agent must necessarily be implied to appoint the Forwarding Railway to act for the consignor during that part of the journey of the goods by the Indian Railway; and, if so, by force of the said section, the Forwarding Railway would be an agent of the consignor.

If no such agency can be implied, in our view, a tacit agreement between the Receiving Railway and the Forwarding Railway to carry the respondent's goods to their destination may be implied from the facts found and the conduct of all the parties concerned. If the Receiving Railway was not an agent of the Forwarding Railway, and if there was no arrangement between the two Governments, the position in law would be that the foreign railway administration, having regard to the exigencies of the situation obtaining during those critical days, brought the wagon containing the goods of the respondent and left it with the Forwarding Railway, and the latter consciously took over the responsibility of the bailee, carried the wagon to New Delhi and offered to deliver the goods to the respondent. The respondent also accepted that relationship and sought to make the Forwarding Railway responsible for the loss as his bailee. On these facts and also on the basis of the course of conduct of the parties, we have no difficulty in implying a contract of bailment between the respondent and the Forwarding Railway.

We may also state that s. 71 of the Indian Contract Act permits the recognition of a contract of bailment implied by law under circumstances which are of lesser significance than those present in this case. The said section reads:

> "A person who finds goods belonging to another and takes them into his custody, is subject to the same responsiblity as a bailee."

If a finder of goods, therefore, accepts the responsibility of the goods, he is placed vis-a-vis the owner of the goods in the same position as a bailee. If it be held

that the Railway Administration in Pakistan for reasons of policy or otherwise left the wagon containing the goods within the borders of India and that the Forwarding Railway Administration took them into their custody, it cannot be denied that their responsibility in regard to the said goods would be that of a bailee. It is true there is an essential distinction between a contract established from the conduct of the parties and a quasi-contract implied by law; the former, though not one expressed in words, is implied from the conduct and particular facts and the latter is only implied by law, a statutory fiction recognized by law. The fiction cannot be enlarged by analogy or otherwise. As we have held that the Receiving Railway was authorized by the respondent to engage the Forwarding Railway as his agent or as his bailee, this section need not be invoked. But we would have had no difficulty to rely upon it if the Forwarding Railway was equated to a finder of goods within the meaning of the section.

If so, the next question that arises is what is the extent of the liability of the appellant in respect of the goods of the respondent entrusted to it for transit to New Delhi. We have held that, in the circumstances of the present case, the application of the provisions of s. 80 of the Indian Railways Act is excluded. If so, the liability of the Forwarding Railway is governed by s. 72 of the said Act. Under that section the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act, 1872. Under s. 151 of the Indian Contract Act, the bailee is bound to take such care of the goods bailed to him as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality and value of the goods bailed; and under s. 152 thereof, in the absence of any special contract, he is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken such amount

1959

Union of India
v.
Amar Singh

Subba Rao J.

of care of it as described in s. 151. In other words, the liability under these sections is one for negligence only in the absence of a special contract. Generally goods are consigned under a risk note under which the Railway Company is absolved of all liability or its liability is modified. No such risk note is forthcoming in the present case. The question, therefore, reduces itself to an enquiry whether, on the facts, the Forwarding Railway observed the standard of diligence required of an average prudent men. The facts found by the High Court as well as by the Subordinate Judge leave no room to doubt that the Forwarding Railway was guilty of negligence in handling the goods entrusted to its care. The wagon reached Khem Karan intact. D. W. 4 deposed that he received from the guard of the train that brought the wagon to the station the inward summary and that on checking the train with the aid of that summary he found that the wagon was intact according to the summary. He also found the seals and labels of the wagon intact and that the 'inward summary' tallied with the entries on the labels. It may, therefore, be taken that when the Forwarding Railway took over charge of the goods they were intact. The evidence of P. W. 1, Thakar Das, establishes that even at Amritsar the wagon was intact. But, thereafter in its onward march towards New Delhi it does not appear on the evidence that the necessary care was bestowed by the railway authorities in respect of the said wagon. The said wagon remained in the yard of Ludhiana Station between November 2, 1947, and January 14, 1948 and also it appears from the evidence that when it reached that place the label showed that its destination was unknown. What happened during these months is shrouded in mystery. It is said that the said wagon arrived at New Delhi on February 13, 1948, and that the Goods Clerk, Ram Chander, unloaded the goods in the presence of the head watchman, Ramji Lal and head constable, Niranjan Singh, when it was discovered that only 15 packages were in the wagon and the rest were lost. The Goods Clerk, Ram Chander (D.W, 4), the head watchman, Ramji Lal (D. W. 7),

the Assistant Train Clerk, Krishan Lal (D. W. 8), and the head constable, Niranjan Singh (D. W. 16), speak to the said facts, but curiously no contemporaneous relevant record disclosing the said facts was filed in the present case. We cannot act upon the oral evidence of these interested witnesses in the absence of such record. No information was given to the respondent about the arrival at New Delhi of the said wagon. Only on June 7, 1948, i.e., nearly four months after the alleged arrival of the wagon, the respondent received a letter from the Chief Administrative Officer asking him to effect delivery of the packages lying in New Delhi Station; but to his surprise, when the respondent went to take delivery no goods were to be found there. Only on August 18, 1948 the appellant offered to the respondent a negligible part of the goods in a damaged condition subject to the payment of the railway freight, and the respondent refuse to take delivery of the same. From the said facts it is not possible to hold that the railway administration bestowed such care on the goods as is expected of an average prudent man. We, therefore, hold that the Forwarding Railway was guilty of negligence.

Then remains the question of limitation. The relevant articles are arts. 30 and 31 of the Indian Limitation Act. They read:

Description of suit	Period of limitation.	Time from which period begins to run.
30. Against a carrier for compensation for losing or injuring goods.	One year	When the loss or injury occurs.
31. Against a carrier for compensation for non-delivery of, or delay in delivering goods.	One year	When the goods ought to be delivered.

Article 30 applies to a suit by a person claiming compensation against the railway for its losing or injuring his goods; and art. 31 for compensation for non-delivery or delay in delivering the goods.

The learned Counsel for the appellant argued that art. 30 would apply to the suit claim, whereas the

1959

Union of India
v.
Amar Singh

Subba Rao J.

learned Counsel for the respondent contended that art. 31 would be more appropriate to the suit claim. We shall assume that art. 30 governed the suit claim and proceed to consider the question on that basis.

The question now is, when does the period of limitation under art. 30 start to run against the claimant? The third column against art. 30 mentions that the said claim should be made within one year from the date when the loss or injury occurs. The burden is upon the defendant who seeks to non-suit the plaintiff on the ground of limitation to establish that the loss occurred beyond one year from the date of the suit. The proposition is self-evident and no citation is called for.

Has the defendant, therefore, on whom the burden rests to prove that the loss occurred beyond the prescribed period, established that fact in this case? The suit was filed on August 4, 1949. In the plaint the plaintiff has stated that loss to the goods has taken place on the defendant-railway, and, therefore, delivery has not been effected. Though in the written statement there was a vague denial of this fact the evidence already noticed by us established beyond any reasonable doubt that the goods were lost by the Forwarding Railway when they were in its custody. But there is no clear evidence adduced by the defendant to prove when the goods were lost. It is argued that the goods must have been lost by the said Railway at the latest on February 20, 1948, when the goods are alleged to have been unloaded from the wagon at the New Delhi Station; but we have already discussed the relevant evidence on that question and we have held that the defendant did not place before the Court any contemporaneous record to prove when the goods were taken out of the wagon. Indeed, the learned Subordinate Judge in a considered judgment held that it had not been established by the Forwarding Railway that the goods were lost beyond the period of limitation. The correctness of this finding was not canvassed in the High Court, and for the reasons already mentioned, on this material produced, there was every justification for the findings. If so, it follows that the

suit was well within time. In this view it is not necessary to express our opinion on the question whether there was a subsequent acknowledgment of the appellant's liability within the meaning of art. 19 of the Indian Limitation Act.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

K. SATWANT SINGH

v.

THE STATE OF PUNJAB

(and connected petition)

(B. P. SINHA, C.J., JAFER IMAM, J. L. KAPUR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Criminal Trial—Joinder of charges and persons in a single trial —Person charged with three offences of cheating tried jointly with abettor—Legality—Place of trial—Sanction to prosecute public servant, requirement of—Minimum fine prescribed by subsequent Ordinance, if violates constitutional protection—Code of Criminal Procedure (Act V of 1898), ss. 179, 180, 197, 234, 239(b)—Indian Penal Code (Act XLV of 1860), s. 420—Criminal Law Amendment Ordinance, 1943 (XXIX of 1943), as amended by the Criminal Law (1943 Amendment) Amending Ordinance, 1945 (XII of 1945), s. 10 —Constitution of India, Art. 20(1).

The appellant, who had been a contractor in Burma, in response to an advertisement issued in August, 1942, by the evacuee Government of Burma, then functioning at Simla, inviting claims from contractors for works of construction and repairs executed by them, submitted claims aggregating to several lacs of rupees. The Government of Burma sent these claims for verification to Major Henderson at Jhansi in March and May, 1943, as he was the officer who had knowledge of these matters. He certified many of these claims to be correct and on his certification the Government of Burma sanctioned the claims and directed the Controller of Military claims at Kolhapur to pay the amounts. On the request of the appellant cheques drawn on the Imperial Bank of India at Lahore were posted to him from Kolhapur and they were encashed at Lahore. The largeness of such claims aroused the suspicions of the Government and it was discovered that the claims made by the appellant were false. He was tried in several trials under s. 420 of the Indian Penal Code along with Henderson, charged under s. 420/109 of the Code for abetment of those offences, before a special Tribunal at Lahore, functioning