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accept the appellant's argument that the letter was intended to make a substantial variation in the contract by making the deposit of security a condition precedent instead of a condition subsequent.

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

Appeal dismissed.

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September 25.

THE COLLECTOR OF CUSTOMS, MADRAS

v.

NATHELLA SAMPATHU CHETTY AND ANOTHER

(And connected cases)

(B.P. SINHA, C. J., A. K. SARKAR, M. HIDAYATULLAH, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Smuggled Goods—Restrictions on importation of gold—Seizure of gold on reasonable belief that it was smuggled—Burden of proof that it was not smuggled on person in possession—Constitutional validity of enactment—Reference of statute in a second statute without incorporation—Effect of modifications of the first statute—Foreign Exchange Regulation Act, 1947 (7 of 1947), ss. 2(f), 8(1), 23A—See Customs Act, 1878 (8 of 1878), ss. 19, 167(8), 178A, 182—Constitution of India, Arts. 14, 19(1), (f) and (g).

Under the powers conferred by s. 8(1) of the Foreign Exchange Regulation Act, 1947, the Central Government issued a notification on August 25, 1948, placing a ban on the importation of gold except with the permission of the Reserve Bank. Section 23A of the Act, which was introduced by an amendment in 1952, provided that "..the restrictions imposed by s. 8(1)..shall be deemed to have been imposed under s. 19 of the Sea Customs Act, 1878, and all the provisions of the Act shall have effect accordingly.." Section 19 of the Sea Customs Act, 1878, enabled the Central Government, by notification, to prohibit or restrict the bringing goods of any specified description into

India and, by reason of other provisions of that Act, goods imported in contravention of the notification issued under s. 19 were liable to confiscation. In 1955, the Sea Customs Act, 1878, was amended by the introduction of s. 178A in that Act, which provided, *inter alia* that "where goods were seized under that Act in the reasonable belief that they were smuggled goods, the burden of proving that they were not smuggled goods shall be on the person from whose possession the goods were seized."

On June 26, 1956, N, an employee of the respondent, on alighting at the Central Station in Madras from Bombay was intercepted by a Police Head Constable and, on a search of his clothing, four blocks of gold weighing about a thousand tolas were found in his possession. The officers of the customs department interrogated him and, finding that he was unable to produce any record for the purchase of the gold, seized from him the blocks of gold. N admitted that he brought the gold for the respondent and enquiries were made to verify the story narrated by him as to the source from which he obtained the gold. Thereafter the Collector of Customs being *prima facie* of the view that the gold seized had been smuggled, issued notice to the respondent to show cause why the said gold should not be confiscated. The respondent offered his explanation but the Collector held that the respondent had not discharged the onus of proving that the gold was not smuggled, an onus which had been cast on him by s. 178A of the Sea Customs Act, 1878, and directed the confiscation of the gold under s. 167(8) of that Act.

The respondent challenged the legality of the action taken by the Collector of Customs on the grounds, *inter alia*, (1) that s. 178A of the Sea Customs Act, 1878, was constitutionally invalid as it was an unreasonable restraint on the citizen's rights to hold property or to do business guaranteed by Art. 19(1)(f) and (g) of the Constitution of India and was not saved by cls. (5) and (6) respectively of Art. 19; (2) that s.178A of the Sea Customs Act which was enacted in 1955 could not be invoked in adjudicating a contravention of a notification under the Foreign Exchange Regulation Act inasmuch as s. 23A of the latter Act when enacted in 1952 in effect incorporated into that Act all the relevant provisions of the Sea Customs Act as they stood in 1952 with the result that any subsequent amendments to the Sea Customs Act could not affect s. 23A; and (3) that the rule as to the burden of proof under s. 178A was not attracted to the present case because the Customs Officer who effected the seizure did not, at the moment of seizure, entertain a reasonable belief that the goods seized were smuggled. The Collector of Customs besides maintaining the legality of the order of confiscation, contended that the question raised in the case as to the constitutional

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validity of s. 178A of the Sea Customs Act was concluded by the decision in *Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta* [1957] S.C.R. 1110.

Held: (1) that *Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta*, [1957] S. C. R. 1110, was a decision as to the validity of s. 178A of the Customs Act, 1878, with reference to Art. 14 of the Constitution of India only and that the question whether the said section was obnoxious to the rights guaranteed by Art. 19(1)(f) and (g) was not considered by that judgment.

(2) that the object of s. 178A was the prevention and eradiction of smuggling, *inter alia*, of gold which was widely prevalent, and in view of the fact that without a Law in that form and with that amplitude smuggling might not be possible of being effectively checked, the restrictions imposed by that section being in the interests of the general public could not be held to be violative of the rights guaranteed by Art. 19(1)(f) and (g), though it might operate somewhat harshly on a small section of the public. Accordingly, s. 178A does not contravene Art. 19(1)(f) and (g).

State of Madras v. *V. G. Row*, [1952] S.C.R. 597, *Manohar Lal* v. *State of Punjab*, [1961] 2 S.C.R. 343 and *Ram Dhan Dass* v. *State of Punjab*, [1962] 1 S.C.R. 852, relied on.

Pukhraj Champalal Jain v. *D. R. Kohli*, (1959) 61 Bom. L. R. 1230, approved.

M. G. Abroi v. *Amichand*, (1960) 62 Bom. L. R. 1043, disapproved.

Nathella Sampathu Chetty v. *Collector of Customs, Madras*, A. I. R. 1959 Mad. 142, reversed.

(3) that a seizure to which s. 178A was applicable was merely a preliminary to the proceedings before a quasi-judicial authority under s. 182 and that it was only when the latter authority was satisfied that the seizure was made "in the reasonable belief that the goods seized were goods that had been smuggled" that the rule of evidence laid down by s. 178A came into operation.

(4) that the wording of s. 23A of the Foreign Exchange Regulation Act, 1947, showed that the reference in it to s. 19 of the Sea Customs Act, 1878, was merely for rendering notifications under the named provisions of the Foreign Exchange Regulation Act to operate as notifications under the Sea Customs Act and that it could not have the effect of incorporating the relevant provisions of the latter Act in the Act of 1947, and that, consequently, when a notification issued under s. 8(1) of the Foreign Exchange Regulation Act was deemed for all purposes to be a notification issued under s. 19 of the

Sea Customs Act, the contravention of the notification attracted to it each and every provision of the Sea Customs Act which was in force at the date of the notification.

The Secretary of State for India in Council v. *Hindustan Co-operative Insurance Society Ltd.*, (1931) L. R. 58 I. A. 259, held inapplicable.

(5) that, in the instant case, the circumstances present at the moment when the gold was taken by the Customs Officer at the Central Station did tend to raise a reasonable suspicion that the gold seized had been obtained illicitly and that this was sufficient to constitute in the words of the statute "a reasonable belief that the goods (gold) were smuggled."

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 408 to 410 of 1960.

Appeals from the judgment and order dated September 11, 1958, of the Madras High Court in Writ Petition Nos. 384 of 1957 and 660 of 1958.

WITH

Criminal Appeals Nos. 38, 126 and 123 of 1959.

Appeals by special leave from the judgments orders dated May 16, 1958, June 19, 1959 and April 14, 1959, of the Punjab High Court in Criminal Revisions Nos. 290 of 1958 and 144 of 1959 and Criminal Appeal No. 677 of 1958 respectively.

AND

Civil Appeal No. 511 of 1960.

Appeal from the judgment and order dated March 20, 1959, of the Bombay High Court (Bench) at Nagpur in Special Civil Application No. 322 of 1958.

AND

Petition No. 118 of 1958.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

C. K. Daphtary, Solicitor-General of India, H. J. Umrigar and *T. M. Sen*, for the appellant in

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C. As. Nos. 408 and 409 of 1960 and respondent in C. A. No. 410 of 1960.

N. A. Palkhivala, S. R. Vakil, R. J. Joshi. S. J. Sohrabji, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for the respondents in C. As. Nos. 408 and 409 of 60 and appellant in C. A. No. 410 of 1960.

R. S. Narula, for the appellant in Cr. A. No. 38 of 59.

C. K. Daphtary, Solicitor-General of India, N. S. Bindra and *D. Gupta,* for the respondent in Cr. A. No. 38 of 1959.

T. M. Sen, for Intervener No. 1 in Cr. A. No. 38 of 59.

K. N. Keswani, for intervener No. 2 in Cr. A. No. 38 of 59.

R. S. Narula and *R. L. Kohli,* for the appellant in Cr. A. No. 126 of 1959.

C. K. Daphtary, Solicitor-General of India, H. J. Umrigar and *D. Gupta,* for the respondent in Cr. A. No. 126 of 1959.

N. C. Chatterji, S. K. Kapur and *Ganpat Rai,* for the appellant in Cr. A. No. 126 of 1959.

A. S. Bodbe, Shankar Anand and *Ganpat Rai,* for the appellant in C. A. No. 511 of 1960.

C. K. Daphtary, Solicitor-General of India, H. J. Umrigar and *T. M. Sen,* for the respondent in C. A. No. 511 of 1960.

S. Venkatakrishnan, for the petitioner in Petn. No. 118 of 1958.

C. K. Daphtray, Solicitor-General of India, H. J. Umrigar and *R. H. Dhebar,* for the respondents in Petn. No. 118 of 1958.

1961. September 25. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR, J.—The Sea Customs Act, 1878 (Act 8 of 1878) (referred to hereinafter as the Act),

was amended by s. 14 of Act 21 of 1955 by the introduction of s. 178A reading :

> "178A. (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.
>
> (2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarattes and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.
>
> (3) Every notification issued under Subsection (2) shall be laid before both Houses of Parliament as soon as may be after it is issued."

It is the constitutional validity of this section that is the common point which arises in these several cases which have been heard together. We have heard on the merits only Civil Appeals 408 to 410 of 1960 and the other cases were posted before us in order that Counsel appearing for the parties in them, might have an opportunity to be heard upon the common question mentioned earlier. We shall, therefore, refer only to the facts of Civil Appeals 408 to 410 of 1960 in dealing with these petitions.

Civil Appeals 408 to 410 :

These appeals come before us on a certificate granted by the High Court of Madras under Arts.132(1) and 133(1)(c) of the Constitution and are directed against the judgment and order of the High Court in two Writ Petitions filed before it by Nathella Sampathu Chetty—the sole proprietor of a business in gold and silver, bullion, jewellery etc. carried on in the name of Nathella Sampathu

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Chetty & Sons (referred to hereafter as the respondent).

The facts giving rise to these appeals are briefly as follows: On the morning of June 26, 1956, one Nandgopal—an employee of the respondent—alighted at the Central station in Madras from the Bombay Express. Nandgopal was intercepted and questioned by a Head Constable of the State Police Service attached to the Prohibition Intelligence Department. Nandgopal admitted that he was in possession of gold which he was bringing for his firm—the respondent—from Bombay. The Head Constable immediately contacted the officers of the Preventive Section of the Customs Department who were on duty at the Central station who interrogated Nandgopal and seized from him four blocks of gold weighing in all about 1,000 tolas. Enquiries were made to verify the story narrated by Nandgopal as to the source from which he obtained the gold and thereafter the Collector of Customs being *prima facie* of the view that the gold seized had been smuggled, issued notice to the respondent to show cause why the said gold should not be confiscated. The respondent offered his explanation but the Collector held that the respondent had not discharged the onus of proving that the gold was not smuggled—an onus which had been cast on him by s. 178A of the Sea Customs Act and directed the confiscation of the gold. The respondent thereupon filed a petition (Writ Petition 384 of 1957) under Art. 226 of the Constitution before the High Court of Madras for the issue of a writ of *certiorari* or other appropriate writ for quashing the order of the Collector of Customs on various grounds to which we shall advert later, including the constitutional validity of s. 178A.

While this writ petition was pending, the respondent filed another petition (Writ Petition 660 of 1958) for a writ of *mandamus* directing the Collector to return the gold seized and confiscated by him.

The two writ petitions were heard together and by an order dated September 11, 1958, the learned Judges of the High Court held, allowing Writ Petition 384 of 1957, that s. 178A of the Sea Customs Act was void under Art. 13 of the Constitution. They further held that even if s. 178A were valid, the condition precedent for invoking the rule as to the burden of proof prescribed by the section had not been complied with, in that the customs officer who effected the seizure which preceded the adjudication did not entertain "a reasonable belief that the gold was smuggled", with the result that the order of confiscation was invalid. Besides, the learned Judges were also of the view that s. 178A of the Sea Customs Act could not be invoked in adjudicating a contravention of a notification under the Foreign Exchange Regulation Act which imposed restrictions on the import of gold. Though on these conclusions the order of the Collector confiscating the gold was set aside, the learned Judges held that the respondent was not entitled to an order for the return of the gold, but only to a direction to the Collector to hear and determine the question about the gold seized being smuggled gold without reference to the rule as to onus of proof enacted by s. 178A. The appellant, the Collector of Customs, Madras, obtained leave from the High Court under Arts. 132 and 133 of the Constitution, to appeal to this Court against the orders in wirt Petition No. 384 of 1957 and No. 660 of 1958 (Civil Appeals 408 and 409) and a similar order was passed in an application for a certificate by the respondent who felt aggrieved by the refusal of the Court in Writ Petition No. 660 of 1958 to direct an immediate return of the gold seized (Civil Appeal 410). The three appeals have been consolidated as they arise out of the same transaction.

We shall first take up for consideration Civil Appeals 408 and 409 of 1960 filed by the Collector of Customs, because unless those appeals fail there would be no need to decide the relief to which the

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respondent would be entitled in Civil Appeal 410 of 1960. In order to appreciate the contentions raised, it would be necessary to set out the statutory provisions which form the background of the impugned provision—s. 178A of the Sea Customs Act. The Foreign Exchange Regulation Act, 1947 (Act 7 of 1947), was brought into force on March 25, 1947, by a notification issued by the Central Government under s. 1(3) of that Act. The preamble to the Act recites:

> "It is expedient in the economic and financial interests of India to provide for the regulation of.....the import and export of currency and bullion."

Section 8 of this Act refers to the import of gold—the commodity with which these appeals are concerned. It enacts:

> "8(1). The Central Government may, by notification in the official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed bring or send into India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.
>
> Explanation.—The bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship of conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or as the case may be sending, into India of that article for the purposes of this section."

Gold is defined in s. 2(f) of this Act thus:

> " 'gold' includes gold in the form of coin, whether legal tender or not, or in the form of bullion or ingot, whether refined or not and

jewellery or articles made wholly or mainly of gold."

These provisions have to be read in conjunction with the provisions of the Sea Customs Act which form, as it were, integrated provisions in relation to the import and export of, among other commodities, gold, and s. 23A of the Foreign Exchange Regulation Act which was introduced by an amendment of 1952 effects this co-ordination. This section reads:

"23A. Without prejudice to the provisions of section 23 or to any other provision contained in this Act the restrictions imposed by sub-sections (1) and (2) of section 8, sub-section (1) of section 12 and clause (a) of sub-section (1) of section 13 shall be deemed to have been imposed under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect, accordingly, except that section 183 thereof shall have effect as if for the word 'shall' therein the word 'may' were substituted."

Turning now to the Sea Customs Act. s. 167(8) enacts:

"167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:—

Offences	Section of this Act to which offence has reference.	Penalties
8. If any goods, the importation of which is for the time being prohibited or restricted	18 & 19	Such goods shall be liable to confiscation; and

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by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction; or

if any attempt be made so to import or export any such goods; or

if any such goods be found in any package produced to any officer of Customs as containing no such goods; or

if any such goods or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in India; or

if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,

any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

Section 19 referred to here reads :

"19. The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government."

The other provisions which have a bearing upon the points arising for discussion with reference to the validity of the impugned s. 178A of the Sea Customs Act are :

"s. 178. Any thing liable to confiscation under this Act may be seized in any place, in India either upon land or water, or within the Indian Customs waters, by any officer of Customs or other person duly employed for the prevention of smuggling."

"s. 181. When anything is seized, or any person is arrested, under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest."

"s. 182. In every case, except the cases mentioned in section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty;

or any person is liable to penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;

(b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased

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duty, not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;

(c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of customs as the Chief Customs-authority may, from time to time, empower in that behalf in virtue of their office:

Provided that the Chief Customs-authority may, in the case of any officer performing the duties of a Customs-collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer, by name or in virtue of his office, the powers indicated in clauses (a), (b) or (c) of this section."

and

"s. 183. Whenever confiscation is authorized by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit."

Immediately the Foreign Exchange Regulation Act came into force in March, 1947, a notification was issued on March 25, 1947, under s. 8(1) placing a ban on the importation of gold except with the permission of the Reserve Bank. This notification was superseded and replaced by a fresh one dated August 25, 1948, also issued under the powers conferred by sub-s. (1) of s. 8 of the Foreign Exchange Regulation Act and this is the notification which continues in force up to this date and which is relevant to the proceedings against the respondent. The notification ran:

"(1) Restrictions on import of gold and silver.—

In exercise of the powers conferred by

sub-s. 1 of s. 8 of the Foreign Exchange Regulation Act, 1947 (Act 7 of 1947) and in supersession of the notification of the Government of India in the late Finance Department No. 12(11) FI/47, dated the 25th March 1947, the Central Government is pleased to direct that except with the general or special permission of the Reserve Bank, no person shall bring or send into India from any place outside India—

(a) any gold coin, gold bullion, gold sheets or gold ingot whether refined or not; or

(b) any silver bullion....."

It would be noticed that on the law as it stood upto 1952 before s. 23A was inserted in the Foreign Exchange Regulation Act, the importation of gold in contravention of the notification of August 1948 issued under s. 8(1) of the Foreign Exchange Regulation Act would have been an importation contrary to s. 19 of the Sea Customs Act, with the result that any person concerned in the act of importation would have been liable to the penalties specified in the third column of s. 167(8) and the imported gold would have been liable to confiscation under the opening words of that column. The gold being "a thing" liable to confiscation could have been seized by any officer of the Customs under s. 178 of the Sea Customs Act with an obligation on the officer effecting the seizure to give to the person from whom the gold was seized a "statement in writing of the reason for such seizure" (s. 181). Thereafter the officers specified in s. 182 would have adjudged the confiscation of these goods subject to the option mentioned in s. 183 with the modification to this provision enacted by s. 23A of the Foreign Exchange Regulation Act. It would further be manifest that at that date before the gold seized was liable to be dealt with under the third column of s. 167(8) by

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an officer adjudicating on the matter under s. 182, the burden of proving that the gold was smuggled lay upon the department and unless the adjudging officer who was acting quasi-judicially was reasonably satisfied on that point, the confiscation or the imposition of the penalty could not have been ordered.

The effect of the imposition of the severe restrictions on the import of gold into this country by the notifications under the Foreign Exchange Regulation Act with a view to defend and conserve the economy of the country in conjunction with the circumstance that the internal production of gold was very little, resulted in a great disparity between the price of gold in India and outside India *i.e.*, in the international markets. This naturally gave a great incentive to smuggling which besides depriving the State of its revenue, also posed a grave threat to national economy. It is only necessary to add that gold was not the only commodity which gave rise to this problem. But as these appeals are concerned with gold, we are confining our examination to that article. Taking these matters into account the Taxation Enquiry Commission, which submitted its report to the Government of India in 1954, recommended a tightening of the law in order effectively to prevent smuggling. After dealing with the administrative problems in regard to the levy and enforcement of Customs duties in Ch. VII of the report the Committee recommended *inter alia* the amendment of the Sea Customs Act so as—

> "(1) to make smuggling a criminal offence, and
>
> (2) to transfer the onus of proof in respect of offences relating to smuggling to the person in whose possession any dutiable, restricted or prohibited goods are found."

In pursuance of these recommendations the Sea Customs Act was amended by Act 21 of 1955 and

among others s. 178A whose terms we have set out, was introduced into it.

As the question of the constitutionality of s. 178A has been the subject of elaborate consideration in a few decided cases to which reference was made during the arguments, we consider that it would be convenient if we deal with them before setting out and discussing the precise grounds on which the challenge to the validity of the provision was rested before us.

Very soon after s. 178A was enacted its constitutional validity was challenged by an original petition filed in this Court (Petition 98 of 1956)—*Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta* (1). The goods involved in the case were diamonds. Four hundred and seventy-five diamond pieces which had been seized from the petitioner, were directed to be confiscated holding them to be smuggled, by the application of the burden of proof laid down in s. 178A. The validity of the confiscation was challenged before this Court on the ground that s. 178A was unconstitutional as being violative of Art. 14 of the Constitution and the contention was rejected. It has been urged by the learned Solicitor-General, for the appellant, that the points regarding the constitutional validity of s. 178A raised in the present appeal are concluded in his favour by this judgment. We shall, therefore, have to examine the exact scope of this decision in detail which we shall do later, but for the present it is sufficient to state that the case dealt mainly with an objection based on a violation of Art. 14 of the Constitution which the following extract from the headnote would indicate:

> "Section 178A of the Sea Customs Act which places the burden of proving that any of the goods mentioned in the section and reasonably believed to be smuggled are not really so on the person from whose possession

(1) [1957] S.C.R. 1110.

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they are seized, is not discriminative in character and does not violate equal protection of law guaranteed by Art.14 of the Constitution".

The validity of the section was next attacked before the High Court of Bombay in a Writ Petition filed under Art. 226 of the Constitution on the ground that it violated Art. 19(1)(f) and (g) of the Constitution: *M. G. Abrol* v. *Amichand*(1). The article involved in that case was gold which had been seized from the petitioner and directed to be confiscated by an adjudicating officer under s. 182 of the Sea Customs Act. The case came up for hearing before K. T. Desai, J., and the learned Judge held that s. 178A was unconstitutional as being an unreasonable restriction on the citizens' right to hold property and to trade; and also that even assuming the provision to be constitutionally valid, the requirements of the section had not been complied with in the case before him inasmuch as the seizing officer had not, at the moment of seizure, "reasonable belief that the gold seized was smuggled". The next decision in order of date is that of the Bench of the Madras High Court dated March 11, 1957, which is now under appeal before us in Civil Appeals 408 to 410 of 1960. The reasoning of the learned Judges of the Madras High Court is on the same lines as that of K.T. Desai, J., in the judgment just now referred. Subsequently the Nagpur Bench of the Bombay High Court had to consider the same question and their decision is reported in *Pukhraj Champalal Jain* v. *D. R. Kohli* (2). There the learned Judges dissented from the decision of K. T. Desai, J., in *M. G. Abrol* v. *Amichand* (1) and of the Madras High Court in *Nathella Sampathu Chetty* v. *The Collector of Customs*(3). It may be mentioned that the arguments of the learned Solicitor-General on behalf of the appellant were in substance the reasoning on which the decision of the Nagpur Bench rests. To complete

(1) (1958) 62 Bom. L.R. 1043 at p. 1046.
(2) (1959) 61 Bom. L.R. 1230.
(3) A I.R. 1959 Mad. 142.

the narrative it is only necessary to add that an appeal was preferred by the Customs authorities from the decision of K. T. Desai, J. The appeal however was dismissed on the ground that even if s. 178A were valid as held by that Court previously, its terms were not attracted to the particular case, because of the non-fulfilment of an essential condition requisite for the application of the section [See *M. G. Abrol* v. *Amichand* (1)].

We shall now proceed to deal with the points urged by learned Counsel for the respondent in support of his plea that the impugned provision violates the fundamental right to hold property under Art. 19(1)(f) and the right to carry on trade or business under Art. 19(1)(g) and was not saved by cls. (5) & (6) respectively of Art. 19. Before we do so, however, it is necessary to advert to the points upon which learned Judges have, in the judgment under appeal, allowed the petition of the respondent, because in deciding these appeals we have necessarily to pronounce upon them also. Besides holding s. 178A of the Sea Customs Act which was called in aid by the Collector of Customs to direct the confiscation of the gold seized to be unconstitutional and therefore void under Art. 13, the learned Judges also upheld two further contentions urged on behalf of the respondent in support of their petition : (1) that s. 178A was not attracted to the determination of a question raised in relation to the confiscation of an article imported in contravention of a notification under s. 8(1) of the Foreign Exchange Regulation Act, (2) that s. 178A required as a pre-condition of its applicability, that the goods which were the subject of adjudication must have been seized "in the reasonable belief that they are smuggled goods" and that in the instant case the Customs Officer effecting the seizure did not or could not entertain such a belief. We consider it would be convenient if we deal with these two points after examining the constitutional validity of s. 178A.

(1) (1960) 62 Bom. L.R. 1043.

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Before embarking on this enquiry it is necessary to deal with the argument of the learned Solicitor-General that every point about the constitutional validity of s. 178A is concluded in his favour by the judgment of this Court in *Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta* (1). We have already extracted the head-note of the report in the Supreme Court Reports which would appear to indicate that this Court considered only the impact of Art. 14 of the Constitution on the provision. Nevertheless, there are some passages in this judgment, which would be immediately referred to on which reliance was placed by the learned Solicitor-General in support of his contention that this judgment is an authority for the position not merely that s. 178A does not violate Art. 14 but that it impliedly, if not expressly decides that the restriction imposed by it on the right to hold property or to engage in the business of dealing in gold was a reasonable restriction within Art. 19(5) & (6) of the Constitution. We will quote these passages in order to examine whether this contention is made out. That judgment after setting out a summary of the provisions of the Sea Customs Act relating to seizure, the adjudiction of confiscation, the imposition of penalties, appeals from the orders of the Customs authorities to the higher revenue authorities and the terms of s. 178, proceeds:

> "No doubt the content and import of the section are very wide. It applies not only to the actual smuggler from whose possession the goods are seized but also to those who came into possession of the goods after having purchased the same after the same has passed through many hands or agencies. For example, if the Customs authorities have a reasonable belief that certain goods in the possession of an innocent party are smuggled goods and the same is seized under the provisions of this Act, then the person from whose possession

(1) [1957] S. C. R. 1110.

> the goods were seized, however innocent he may be, has to prove that the goods are not smuggled articles. This is no doubt a very heavy and onerous duty cast on an innocent possessor who, for aught one knows, may have *bona fide* paid adequate consideration for the purchase of the articles without knowing that the same has been smuggled. The only pre-requisite for the application of the section is the subjectivity of the Customs-officer in having a reasonable belief that the goods are smuggled."

This passage is followed by an examination of the matters with reference to Art. 14 expressing the opinion that the petition did not show in what manner there had been a violation of that Article, and the judgment continues:

> "But Mr. Chatterjee argues that the burden of proof enunciated therein is opposed to fundamental principles of natural justice, as it gives an unrestricted arbitrary and naked power to the customs authorities without laying down any standard or norm to be followed for exercising powers under the section..... It is a heavy burden to be laid upon the shoulders of an innocent purchaser who might have come into possession after the article has changed many hands and this, it is alleged, invokes discrimination between him and other litigants and deprives him of the equal protection of the law guaranteed by Art. 14 of the Constitution. A large number of cases have been cited at the Bar in support of the respective contentions of the parties."

This is followed by a citation from the decisions of this Court in which the scope and content of Art. 14 were discussed and in particular a passage in the judgment in *Budhan Chaudhury* v. *The State of Bihar*(1) where the principle that Art. 14

(1) [1955] 1 S.C.R. 1045, 1048-1049.

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does not forbid classification on a reasonable and rational basis is extracted. The judgment proceeds:

> "A cursory perusal of s. 178A will at once disclose the well defined classification of goods based on an intelligible differentia. It applies only to certain goods described in sub-s. (2) which are or can be easily smuggled. The section applies only to those goods of the specified kind which have been seized under the Act and in the reasonable belief that they are smuggled goods. It is only those goods which answer the threefold description that come under the operation of the section. The object of the Act is to prevent smuggling. The differentia on the basis of which the goods have been classified and the presumption raised by the section obviously have a rational relation to the object sought to be achieved by the Act.....The impugned section cannot be struck down on the infirmity either of discrimination or illegal classification."

We are therefore satisfied that the decision of this Court considered the validity of s. 178A only with reference to Art. 14 and that it is not a decision regarding the impugned legislation being or not being obnoxious to Art. 19(1)(f) & (g). It is only necessary to add that at the beginning of the discussion, Govinda Menon, J., specifically points out that he was not considering any attack on s. 178A based on an infringement of Art. 19(1)(f) & (g), for he said :

> "Though Mr. Chatterjee faintly argued that the provisions of Art. 19(1)(f) & (g) and Art. 31 of the Constitution had been violated, he did not seriously press those contentions. The main point of the attack was centered on the contention that s. 178A was violative of the principles of equal protection of the laws guaranteed under Art. 14 of the Constitution."

We cannot accept the further submission either that, even if this Court did not in terms consider the validity of s. 178A with reference to Art. 19 (1) (f) & (g), still the reasoning by which it rejected the contention that it violated Art. 14 would be sufficient to cover the former also. No doubt, there are situations when the points regarding a violation of Art. 14 and an objection that a restriction is not reasonable so as to conform to the requirements of Art. 19(5) or (6) may converge and appear merely as presenting the same question viewed from different angles. Such, for instance, are cases when the denial of equality before the law is based on the ground that the power vested, say, in an administrative authority to affect rights guaranteed to a citizen is arbitrary, being unguided or uncanalised. The vesting of such a power would also amount to the imposition of an unreasonable restriction on the exercise of the guaranteed right to trade or carry on a business etc. Where however, there is guidance and the legislation is challenged on the ground that the law with the definite guidance for which it provides has outstepped the limits of the Constitution by imposing a restraint which is either uncalled for or unreasonable in the circumstances, the scope and content of the enquiry is far removed from the tests of conformity to rational classification adopted for judging whether the law has contravened the requirement of equal protection under Art. 14.

It is therefore necessary for us to consider whether s. 178A is obnoxious to the rights guaranteed by Art. 19(1)(f) & (g) which is the ground upon which the section has been held unconstitutional by the judgment of the Madras High Court under appeal. We have already set out what one might term 'the historical background and the surrounding circumstances' which necessitated the enactment of this provision. As already indicated, since the commodity with which the present appeals are concerned is gold, we are referring to that in particular, though the circumstances attendant on the

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other commodities referred to in s. 178A might be similar.

As pointed out already, the disparity between the internal and external price of gold became, by 1948, so great as to provide considerable incentive to smuggling by making it very profitable. This was assisted by the very long coast-line which India has, coupled with the extensive land frontiers both on the east as well as on the west, ignoring for the moment the very small pockets of foreign territory within the sub-continent. Notwithstanding the efforts of the Customs authorities and the Preventive Staff of that department, a considerable volume of the yellow metal did seep into the country and efforts had therefore to be made to tighten the law in this regard. It was in pursuance of this endeavour that s. 178A was introduced into the Sea Customs Act in 1955. Ex facie, the impugned provision enacts a rule of evidence and the ratio underlying it is not far to seek; and it is that the person in possession of the gold would, with certainty in most cases, be in a better position to prove that it was legally within the country than the Customs authorities. In this connection reference may be made to the observations by Lord Goddard, C. J., in *R.* v. *Fitzpatrick* (1). Speaking of s. 259 of the U. K. Customs Consolidation Act, 1876, which enacted :

> "If in any prosecution in respect of any goods seized for non-payment of duties, or any other cause of forfeiture, or for the recovering any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of customs have been paid in respect of such goods, or whether the same have been lawfully imported or lawfully unshipped, or concerning the place from whence such goods were brought, then and in every such case the proof thereof shall be on the defendant in such prosecution."

1) [1948] 1 All. E.R. 769, 772.

the learned C. J. said:

> "The onus is put on the defendant when there is a dispute in the proceedings whether duty has been paid or whether the goods were lawfully imported. The obvious reasons for this provision is that the facts must be within the knowledge, and often within the exclusive knowledge of the defendant. If, for instance, it is found that he has dealt in prohibited goods, if he can show that he acquired them in the ordinary course of business obviously he would not be guilty of dealing in them with intent to avoid the prohibition. He can prove the positive and, unless he had to undertake the proof, the Crown would generally have to undertake the proof of a negative."

Mr. Palkivala, learned Counsel for the respondent, stated that if the impugned section, s. 178A, had contented itself with laying down the principle enunciated in the above observations of Goddard, C. J., he would not contend that it was an unreasonable restraint on the citizen's rights to hold property or on his right to do business guaranteed by Art. 19 (1) (f) & (g). His submission, however, was that the burden cast upon the person from whom gold were seized transcended the limits of what that person could reasonably be called on to prove and that as the burden cast by s. 178A was impossible of being discharged, it amounted not to a law laying down a rule of evidence, but operated virtually to effect a confiscation of the property of a citizen without affording him any real opportunity to establish his right to it.

To appreciate properly this argument about the real effect of the provision it is necessary to set out a few facts relating to gold as an article of trade in this country. Learned Counsel on either side agreed that the matters stated in relation to gold and the trade in gold referred to in the following passage in the judgment of K. T. Desai, J.,

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correctly sums up the position. The learned Judge summarised the position thus :

> "It is common knowledge that India produces very little gold and that most of the gold available in India is imported gold. A statement has been put in by consent showing the official figures of India's imports and exports of gold from 1851 to 1956. It shows a net import in the country, after deducting exports, of 353 crores and three lakhs worth of gold. Restrictions on the import of gold were for the first time introduced in India by Finance Department (Central Revenues) Notification No. 53, dated September 4, 1939. By that notification the Central Government in the exercise of the powers conferred by s.19 of the Sea Customs Act prohibited the bringing or taking by sea or land into British India from any place other than Burma or out of British India to any place other than Burma gold coin, gold bullion or gold ingots, whether refined or not, except on the authority of a licence granted in that behalf by the Reserve Bank of India.....Till April 1, 1946, gold remained duty free. Thereafter duty was levied on the import of gold bullion, gold plate, gold manufactures etc..... Gold besides being a store of value, is an article of adornment and investment. It is capable of being split and there can be a fusion of diverse quantities of gold. It is easily changeable in form, size and shape. The gold available in the market hardly bears any identification mark. It is impossible for any person looking at gold to say whether duty has been paid thereon or not or whether it has been smuggled. It is precisely the difficulty experienced by the customs officers with the whole machinery of Government at their disposal in proving that the gold has been smuggled which is itself made a reason for throwing the burden upon the citizens

to establish that the gold is not smuggled..... Gold as such has no earmark. It is impossible to identify gold in the possession of a person with the gold mentioned in the Bill of Entry of any importer of gold.....Gold has been imported through centuries into this country and it is virtually impossible for a person to establish that any particular quantity of gold in his possession was the gold imported in the country at a particular time without resort to smuggling. The proof required presupposes the existence of gold in an identifiable form from the time of its import to the time of its ultimate sale to the person from whose possession the same has been seized."

Mr. Palkivala, learned Counsel for the respondent, explained to us the special features attaching to gold as a commodity and as a store of value, and of the difficulties, if not impossibility, of identifying one piece of gold from another in the absence of a requirement of marking, and basing himself on this factual position submitted six grounds in support of his contention that the restriction imposed by s. 178 A was unreasonable and we shall deal with these points in the same order :

(1) Section 178A, no doubt, on its face purports to be a rule of evidence, but in reality is not so. The purpose of the enquiry by the adjudicating officer is to find out whether the gold seized from a person had been smuggled, and in such an enquiry the fact to be proved, viz., that the gold had been smuggled is statutorily established not as an inference from basic facts, which would indicate the smuggled character of the Gold seized, but from the mere belief of the seizing officer that the gold seized was smuggled,

(2) It was said on the other side that the requirement in s. 178 A that the officer seizing the gold must entertain "a reasonable belief" that the gold was smuggled provided an adequate safeguard

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to the person affected which would render the restriction imposed reasonable within cls. (5) & (6) of Art. 19. This argument is untenable. If the reasonable belief was a matter for the subjective satisfaction of the seizing officer, as seems to be implied from the observations of this Court in *Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta* (1), it provides no safeguard at all for the person from whom the gold is seized. Even if, on the other hand, the test is objective, in the sense that at the stage of the adjudication under s. 182 the grounds upon which the belief was entertained, could be the subject matter of enquiry it furnishes no safeguard either, because the "reasonableness" of the belief regarding the smuggled character of the gold would have to be judged by the adjudicating officer with reference to the information which the seizing officer had at the moment of seizure, and that information must necessarily have been obtained behind the back of the person from whom the gold had been seized and before the officer commenced any enquiry to ascertain the truth or otherwise of the information conveyed to him,

(3) There is no reasonable or rational connection between the fact to be proved, viz., that the gold was smuggled and the fact from which such an inference is permitted to be drawn by the impugned provision, viz., the reasonable belief of the officer effecting the seizure that the gold was smuggled. There is therefore no adequate basis on which the provision could be sustained as a rule of evidence,

(4) The operation of s. 178A is not restricted in point of time or to persons actually suspected to be connected with the import but extends also to persons who are able to establish bona fide acquisition of gold but who are unable to prove how the person from whom they acquired, obtained the gold they sold,

(1) [1957] S.C.R. 1110.

(5) A presumption of this sort might be reasonable in respect of goods which are dangerous or noxious *per se*, like firearms or poison, since ordinarily people might be expected to be on their guard before obtaining such goods to ensure that their acquisition was lawful and in accordance with the formalities, if any prescribed by the relevant statute or rule. Gold, however, is not such a type of commodity. It is an innocuous article of commerce and is under the law a subject of unrestricted trade within the country. The burden of proof of the sort imposed by s. 178A, in respect of such a commodity, is therefore unreasonable,

(6) The burden of proof cast by s. 178A is, in most cases, impossible of being discharged because: (a) it extends to facts which would not be in the possession of a bona fide purchaser and would comprise matters which he never knew, or could never know, (b) large quantities of gold have been imported into India before restrictions were imposed in 1939. The net imports upto 1939 are estimated at over 353 crores of rupees which at the present price of gold would be over 2,000 crores of rupees. As gold which is sold in the market is not identifiable, it would be impossible for any purchaser to say whether the gold that he was buying was that which had been imported lawfully before 1939 or had come into the country after 1939 after payment of duty or had been smuggled into the country in violation of the Foreign Exchange Control Regulations. The section, therefore, practically prohibits all holding of gold or trade in gold and subjects the holding of and the trade in gold to the penalty of confiscation, (c) indigenous gold has been produced in mines in India both before and after 1939 and there is nothing to differentiate this from imported gold, (d) it is a commodity which frequently changes hands because of regular trade and widespread

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use as ornaments etc., and finally (c) the indentification of gold is impossible because of frequent meltings and fusion of separate pieces and the absence of any system of compulsory marking.

We shall deal with each of these points and examine them in the light of the submissions made by the learned Solicitor-General in answer. Grounds 1 and 3 which we have set out earlier may be taken up together since they are merely different modes of expressing the same contention. The point raised is that there is no rational connection between the fact from which the statute raises the presumption and the fact which has to be proved in order that the goods might be the subject of confiscation. The argument is that the fact from which the presumption is drawn is the reasonable belief of the officer effecting the seizure that the article seized is smuggled; while the fact which by the terms of the statute it is held to prove is that the gold seized is smuggled; with the result that the practical effect of the provision is that there is a statutory direction to the adjudicating officer to treat the gold as smuggled so as to entitle him to confiscate the same. It is only if learned Counsel for the respondent is right that the effect of the section is as above that the several decisions of the American Courts to which he invited our attention, could have any application. Learned Counsel relied particularly on the decisions in *Bailey* v. *State of Alabama* (1), and *Manley* v. *State of Georgia* (2). The first of these was concerned with the validity of a law of the State of Alabama by which refusal without just cause, to perform the labour agreed to be performed in a written contract of employment under which the employee had obtained money which he did not refund was made *prima facie* evidence of an intent to commit a fraud. The Supreme Court held the law invalid. Two grounds were urged in support of the argument that the legislation was unconstitutional. The first was that

(1) (1911) 219 U. S. 219 : 55 L. Ed. 191.
(2) (1929) 279 U. S. 1 : 73 L. Ed. 575.

it was in violation of the 13th amendment against "involuntary servitude except as punishment for crime", the other that the law was in violation of due 'process' clause contained in the 14th amendment. The Supreme Court upheld both these contentions, but what is relevant to the present context and on which learned Counsel relied was the reason assigned for holding that the rule of evidence enacted by the impugned statute violated the requirement of due 'process'. Reliance was placed for the State before the Supreme Court on the fact that the presumption raised was not conclusive but was open to rebuttal by the accused, but this was held not to be of avail, because according to the rule of evidence enforced by the Courts of Alabama, the accused, for the purpose of rebutting the statutory presumption, was not allowed to testify as to his uncommunicated motives, purposes or intentions, so that virtually it amounted to a conclusive presumption against the accused. The statute whose validity was attacked in the second American decision referred to was one declaring that every insolvency of a bank shall be deemed fraudulent and subjected the directors to imprisonment unless they repelled the presumption of fraud by showing that the affairs of the bank had been fairly and legally administered. Head Note 1 to this case sums up the American law on the subject of the constitutional validity with reference to the due 'process' clause, of laws of evidence creating presumptions. It runs:

> "1. State legislation that proof of one fact, or group of facts, shall constitute prima facie evidence of the main or ultimate fact in issue, does not constitute a denial of due process of law if there is a rational connection between what is proof and what is to be inferred, and the presumption is not unreasonable, and is not made conclusive of the rights of the person against whom it is raised."

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In regard to the American decisions of which only a few were cited, including those just now set out, the principle underlying them is to be found summarized in Rottschaefer's Constitutional Law at p. 835, where the learned author says:

> "The power of a legislature to prescribe the rules of evidence is universally recognised, but it is equally well established that due process limits it in this matter. It may establish rebuttable presumptions only if there is a rational connection between what is proved and what is permitted to be inferred therefrom."

It would be seen that the decisions proceed on the application of the "due process" clause of the American Constitution. Though the tests of 'reasonableness' laid down by cls. (2) to (6) of Art. 19 might in great part coincide with that for judging of 'due process', it must not be assumed that these are identical, for it has to be borne in mind that the Constitution framers deliberately avoided in this context the use of the expression 'due process' with its comprehensiveness, flexibility and attendant vagueness, in favour of a somewhat more definite word "reasonable", and caution has, therefore to be exercised before the literal application of American decisions. In making these observations we are merely repeating a warning found in the judgment of this Court in *A. S. Krishna* v. *The State of Madras* (1), where Venkatarama Ayyar, J., speaking with reference to the point now under discussion after quoting the passage already extracted from Rottschaefer's treatise stated:

> "The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution."

With this caution we shall proceed to examine the submission of learned Counsel regarding the

(1) [1957] S.C.R. 399, 412.

absence of any rational connection between the fact to be proved and the fact on which the presumption is raised. An analysis of the arguments of the learned Counsel shows that the real legal objection to the provision lay in the sixth point urged by him, viz., the impossibility of discharging the burden of proof cast by s. 178A, which thus virtually results in a confiscation of property without a judicial adjudication or condemnation. Pausing here we might mention that two matters might be urged as flowing from or as the necessary result of the impugned provision: (1) that even a bona fide possessor of the goods might be deprived of his property notwithstanding that there was no basis even for a suspicion that he was a party to the smuggling or had any knowledge that the goods in his possession were smuggled goods; and (2) that the burden cast on the possessor to prove the negative, namely, that the gold was not smuggled cast an impossible burden upon the person from whom the goods are seized as it virtually amounts to a confiscation by the law without any reasonable proof before a quasi-judicial authority that the gold was smuggled. To this last, the sixth point, we shall advert in its proper place, but what we are concerned to point out at this stage is that apart from the point about the impossibility of discharging the onus of proof cast by the section, there is little basis for the argument that there is lack of any rational connection between the facts giving rise to the presumption and the fact presumed, and to this we shall now proceed.

This question about the lack of rational connection may be considered from two points of view. First Mr. Palkivala does not impugn the constitutional validity of s. 106 of the Indian Evidence Act or the legislative application of the principle underlying it to any concrete case. It need hardly be pointed out that in every case without exception, the possessor of the gold would be the person best acquainted with the manner of

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his acquisition and the circumstances attendant on or connected with that acquisition. It was part of the learned Counsel's submission that he could not successfully impugn the validity of a provision on the terms of s. 259 of the U. K. Customs Consolidation Act. Recalling the decision in *R.* v. *Fitzpatrick* (1), already referred to, we might mention that the prosecution there was for a violation of s. 186 of the U. K. Customs Consolidation Act, 1876, which, so far as material, was in substantially the same terms as the relevant portion of s. 167(8) of the Sea Customs Act, 1878, the essential ingredient of the offence being indicated by the words "person concerned in dealing with goods the import of which is prohibited or which are liable to duty with intent to defraud His Majesty", and it was a violation of this section that Fitzpatrick was found guilty of by the application of the rule as to onus of proof prescribed by s. 259 extracted earlier. If in a prosecution for dealing in smuggled goods the onus could with constitutional propriety be cast upon the accused to prove that the goods were not smuggled, it is difficult to see any reasonable basis for the contention that where the offence charged against a person is not dealing in but possession of smuggled goods, there is a constitutional bar on the burden being so laid.

Secondly, is learned Counsel correct in his submission that under s. 178A the onus is cast upon the possessor of the goods seized by reason only of the reasonable belief of the seizing officer that the goods seized by him are smuggled? It is to be noted that the seizure by the officer in the belief that the goods are smuggled does not by itself operate to effect the confiscation or deprive the owner of his property in the goods. This result, however, follows only on an order of an adjudicating officer who investigates into the complaint regarding the defendant's possession of the smuggled goods. As we shall have occasion to point out

(1) [1948] 1 All. E. R. 769, 772.

later the entire evidence in the possession of the seizing officer would be and has to be before the officer adjudicating the confiscation under s. 182 of the Sea Customs Act. No doubt, on the language of s. 178A the presumption of the goods being smuggled arises only when the seizure is made by an officer entertaining a reasonable belief that the goods are smuggled, and in that sense the reasonable belief of the seizing officer is a pre-requisite for the statutory onus to arise. It is also true that at the stage of the adjudication the reasonableness of the belief of the officer effecting the seizure that the goods are smuggled would be the subject-matter of investigation by the adjudicating officer. Nevertheless it is manifest that at the stage of the adjudication (when only the rule of evidence laid down by the section comes into operation) the very facts which led the seizing officer to effect the seizure, as distinguished from their significance as affording a reasonable belief for the seizing officer to hold that the goods are smuggled are before the adjudicating officer. These facts which justified the seizing officer to reasonably believe that the goods were smuggled would certainly impart a rational connection between the facts on which the presumption is raised and the fact to be proved, so that whatever other constitutional infirmity might attach to the impugned provision, the lack of rational connection is not one of them. It appears to us therefore that the argument regarding the lack of rational connection has no substance. It is derived wholly on a literal reading of s. 178 A and would not be available if the provisions were read in the manner we have just now indicated.

The second of the grounds urged by learned Counsel was that the requirement of s. 178 A that the belief of the officer seizing the goods should rest on reasonable grounds provided no safeguard to the citizen, as the seizing-officer who acts administratively entertains the belief on unproved information gathered from sources which most often are not and

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in practice will not be possible to be disclosed to the party affected. In connection with this point two alternative submissions were made : (1) that the reasonable belief of the officer effecting the seizure was one entirely for his subjective satisfaction and that this rendered the protection wholly illusory and therefore patently unreasonable. This was advanced on the basis of the passage in the judgment of this Court in *Babulal Amthalal Mehta* v. *The Collector of Customs, Calcutta* (1), already extracted reading :

> "the only pre-requisite for the application of the section is the subjectivity of the Customs Officer in having a reasonable belief that the goods are smuggled."

The learned Solicitor-General, on the other hand pointed out that this was not really part of the decision, but was just an observation and that he would not support it. The learned Solicitor-General submitted that a seizure to which s. 178 A was applicable was merely a preliminary to proceedings before a quasi-judicial authority under s. 182. When the matter comes before the latter authority, and anterior to that authority invoking the presumption raised by s. 178 A, it would, on the terms of the section, have to be satisfied that the seizure was made "in the reasonable belief that the goods seized were goods that had been smuggled". At that stage the enquiry is not and cannot be confined as to whether the seizing-officer bona fide entertained the belief, but must necessarily extend to an examination of the grounds upon which that belief was entertained with a view to ascertain whether the belief was reasonable. It might be that the entirety of the evidence which conceivably in several cases consist of information communicated by informers might not be made available to the person affected, but still the adjudicating-officer would have to satisfy himself that the requirements

(1) [1577] S. C. R. 1110.

of s. 178 A had been complied with before invoking the presumption laid down by that section.

Mr. Palkivala's alternative submission was that even if test of 'reasonable belief' was not subjective but was objective, in that the point as to whether the belief was reasonable was open to examination by the adjudicating-officer under s. 182, still, this provided no sufficient safeguard, because, if "information not tested by cross examination" could from the basis of "reasonable belief", by applying the same tests, the adjudicating officer would and must in most cases reach the same conclusion.

It is, no doubt, true that in some cases there might be pieces of information on the basis of which the seizure was effected which might not be capable of being disclosed to the affected party because it might consist of information supplied by customs informers, but if that information would have to stand the test of scrutiny as to credibility by an independent officer dealing with it in a quasi-judicial capacity, it cannot be said that the protection is illusory. It has also to be added that at the stage of appeal or revision from the orders of the officer adjudging confiscation under s. 182 of the Act each successive appellate or Revisional authority has also to address itself to this requirement.

We shall now pass on to the fourth of the points urged by learned Counsel for the petitioner that the onus of proof is unreasonable, in that it was not restricted in point of time or to persons connected with the import. The point suggested may be expanded in these terms : What the party affected has to prove is not that his acquisition has been *bona fide,* which of course he might be in a position to prove and might properly be required to prove, but that somebody else over whom he has no control and of whose actions he would, in most cases, be completely ignorant has similarly *bona fide*

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acquired the gold without violating the law and so on until one reached the stage of the origin of the gold which is the subject of seizure and of adjudication before the Customs authority. It would be seen that this is really the argument upon which the sixth of the points urged by learned Counsel rests and therefore it will be convenient to examine the soundness of the contention and the answers which have been made on the other side after dealing with point No. 5.

The fifth point relates to the fact that the presumption raised by the section is about the possession of an innocuous article of property which under the law is the subject of unrestricted trade in the open market as distinguished from articles which are inherently dangerous—such as firearms or Poisonous drugs, in regard to which possession and dealing are legitimately subject to severe restrictions. Learned Counsel is, no doubt, right in his submission that gold as a commodity is an innocuous article of commerce, that articles made of gold have been used as part of jewellery by the middle and upper classes from the beginning of time, that it has served as a store of value from ancient times and that the very large number of people in this country are in possession of gold for the purposes just now mentioned. But that however is not any conclusive consideration in support of the invalidity of a law which seeks to throw the burden of establishing possession as legal under the law, upon the possessor. It cannot be seriously disputed that in most of the cases the possessor of the gold would certainly be in a position to establish the mode of his acquisition (subject to the last of the points about the burden of proof being impossible to discharge), which would more often than not take it out of the category of smuggled gold. It is only in those cases where reasonable suspicion exists that the gold in the possession of a person has come into the country by illicit means, that there is power in an officer to effect the seizure and in most

of the cases the innocent possessor would be in a position to discharge the onus. It is therefore in cases where a person is unable to prove how he got into possession of the gold found with him or where his explanations are found to be false or unacceptable that in the large majority of cases the section would normally be invoked. Besides these, it would be applied also in cases where a person is able to prove that his acquisition was *bona fide* but that the persons from whom he acquired or one higher up in the series of prior owners is unable to explain satisfactorily his possession, and it is only in these marginal or extreme cases that the onus created by the section might be contended to be harsh and unreasonable. Learned Counsel is, therefore, not right in suggesting that s. 178A operated, as it were, by itself to confiscate the gold and gold ornaments in the possession of the entire population of the country, each individual being compelled before the restoration of the gold to him to strictly prove either that the gold was of indigenous origin or had been imported prior to 1939, or if imported subsequently had either been permitted to be imported or had paid duty, if such duty was leviable. We consider that this is not the effect of the section and that it does not, on any reasonable construction, justify this picture of its operation.

We shall now proceed to consider the last of the points raised by learned Council in conjunction with point No. 4 which we had reserved for being examined along with it. This point learned Counsel expanded in the following terms. The burden of proof cast by the section is or is almost impossible of discharge, because (1) it extends to facts which would not be in the possession of bona fide purchaser at all, facts which he never knew and which he could never reasonably ascertain; (2) large quantities of gold have been imported into this country before the introduction of restrictions on their importation by virtue of the legislation

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brought into force from 1939. In this context, learned Counsel relied on the several matters set out in the passage from the judgment of K. T. Desai, J., extracted earlier and laid particular emphasis on the fact : (a) that gold was held in myriad forms and for diverse purposes by a sizeable portion of the population of the country, (b) that gold in its several forms was incapable of being identified as indigenous or imported, or if imported had paid duty or not. In view of these circumstances he urged that to call upon any person to prove any thing more than that his acquisition of the gold was *bona fide* and without violation of the law would be to cast an impossible burden upon the possessor. Learned Counsel further urged that the precise reason for which the burden had been thrown upon the possessor was because of the inability of the State to establish before the quasi-judicial authorities acting under s. 182 reasonable proof that the gold seized was smuggled. He therefore submitted that if Government with all its administrative machinery operating in several fields was unable to lead evidence which could satisfy the Collector of Customs that the gold seized had an illicit origin, how could it be reasonable to expect the individual possessor, who knew nothing beyond how he himself came by the gold, to establish the negative, *viz.*, that the gold in his possession had not been smuggled but was lawfully within the country.

Before considering these submissions it is necessary to mention one point suggested in answer by the learned Solicitor-General which has apparently found favour with the learned Judges of the Division Bench of the Bombay High Court in *Pukhraj Champalal Jain* v. *D. R. Kohli*(1). The point was this: The Central Board of Revenue had issued certain administrative instructions as regards the manner in which the Customs Officers should regulate their procedure before the goods are adjudged to be confiscated under the provisions of the Sea Customs Act. These are set out at p. 1240

(1) (1959) 61 Bom. L.R. 1230.

of the Report in 61 Bombay Law Reporter and need not be repeated here. The learned Solicitor-General's argument was that as the section was being administered subject to these safeguards, the provision must be held to be a reasonable restriction within cl. (6) of Art. 19 of the Constitution. We are clearly of the opinion that the argument about the relevance of this matter is incorrect and must be rejected. This Court has held in numerous rulings, to which it is unnecessary to refer, that the possibility of the abuse of the powers under the provisions contained in any statute is no ground for declaring the provision to be unreasonable or void. Commenting on a passage in the judgement of the Court of Appeal of Northern Ireland which stated:

> "If such powers are capable of being exercised reasonably it is impossible to say that they may not also be exercised unreasonably"

and treating this as a ground for holding the statute invalid Viscount Simonds observed in *Belfast Corporation* v. *O. D. Commission*(1):

> "It appears to me that the short answer to this contention (and I hope its shortness will not be regarded as disrespect) is that the validity of a measure is not to be determined by its application to particular cases... .....If it is not so exercised (*i.e.*, if the powers are abused) it is open to challenge and there is no need for express provision for its challenge in the statute".

The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow that a statute which is otherwise invalid as being unreasonable cannot be saved by its being administered in a reasonable manner. The constitutional validity of the statute would have to be determined on the basis of its

(1) [1960] A.C. 490, 520-521.

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provisions and on the ambit of its operation as reasonably construed. If so judged it passes the test of reasonableness, possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid and similarly if the law properly interpreted and tested in the light of the requirements set out in Part III of the Constitution does not pass the test it cannot be pronounced valid merely because it is administered in a manner which might not conflict with the constitutional requirements. In saying this we are not to be understood as laying down that a law which might operate harshly but still be constitutionally valid should be operated always with harshness or that reasonableness and justness ought not to guide the actual administration of such laws.

We shall now proceed to examine what in effect is the central point in the argument of the learned Counsel for the respondent which might be split up into two heads: (1) Under s. 178-A the burden of proof is cast upon a person from whom the goods have been seized which is impossible for him to discharge, with the consequence that though in form the impugned section purports to be a rule of evidence, it is virtually a law which *per se* effects confiscation in every case to which it is applicable. (2) Is such a law a reasonable restriction on the right to hold property or on the right to carry on business within cls. (5) & (6) of Art. 19, but they may be considered together.

Section 178-A operates to cast the burden of proof on the person from whose possession goods specified in its sub-s. (2) are seized to establish that the goods are not smuggled. It must be apparent that this will include, in several cases, persons who are concerned in and are charged with being concerned in the act of illicit importation. In their case, as we have already pointed out, learned Counsel admits that the onus is properly shifted and that such a provision would be reasonable and so constitutionally valid, though undoubtedly it might be possible for the State to prove

its case even without the aid of the presumption raised by s. 178A. Again there might be some cases where goods are seized from a person who is unable to account satisfactorily for his ownership or possession. In such cases also we did not understand learned counsel for the petitioner to suggest that the shifting of the burden of proof would be unconstitutional, for surely the principle underlying s. 106 of the Evidence Act which, it is conceded, enunciates a just and reasonable principle would serve to sustain the validity of the impugned provision. The two classes of cases which we have just set out would in themselves constitute most of the cases in which suspicion or information of the type which leads to seizure and the ensuing proceedings would occur. Section 178A however does not exhaust those classes, and that is the ground of complaint by the learned Counsel, and it is precisely on this basis or for this reason that learned Counsel contends that the entire provision is constitutionally invalid. This analysis would show that the provisions of the section are constitutionally valid in the sense of being reasonable restrictions on the right to hold property or to carry on trade or business in the large percentage of cases to which the section would apply, and it is only in the marginal cases already described that it can, with any justification, be contended that the restriction is unreasonable. From this position, the question that arises is whether because of the inclusion of this type of case the impugned provision should be held to be constitutionally invalid. This has to be taken in conjunction with what is obviously correct, that any severance of the marginal cases and their exclusion from the operation of the provision would greatly reduce its effectiveness and provide innumerable loop-holes for easy evasion. It is in this context that the test for ascertaining the "reasonableness" postulated of the restrictions in cls. (2) to (6) of Art. 19 assumes great relevance and crucial importance. There are several decisions of this Court in which the relevant

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criteria have been laid down but we consider it sufficient to refer to a passage in the judgment of Patanjali Sastri, C. J., in *State of Madras* v. *V. G. Row*(1). The learned Chief Justice said at p. 607 of the Report:

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

It would be apparent that this is in line with the great principle underlying the structure of the rights guaranteed by Art. 19, *viz.*, a balancing of the need for individual liberty in the matter *inter alia* of the right to hold property or of the right to trade, with the need for social control in order that the freedoms guaranteed to the individual subserve the larger needs—moral, social, economic and political —of the community and thus ensure orderly progress towards the goal indicated by the preamble. It would follow that the reasonableness of the restraint would have to be judged by the magnitude of the evil which it is the purpose of the restraint to curb or eliminate.

The submission of the learned Solicitor-General was that the reasonableness of the impugned provision had to be judged in the light of the widespread smuggling in commodities like gold which if not checked was calculated to destroy national economy and hamper economic stability and progress, and that no

(1) [1952] S. C. R. 597, 607.

reasonable alternative to the provision would achieve the desired end. In this connection he drew our attention to the Report of the Taxation Enquiry Commission, 1953-54, which pointed out the factual position regarding the existence of widespread smuggling in certain commodities including *inter alia* gold. They stated at p. 320 of the Report:

> "11. Smuggling now constitutes not only a loophole for escaping duties but also a threat to the effective fulfilment of the objectives of foreign trade control. The existence of foreign pockets in the country accentuates the danger. The extent of the leakage of revenue that takes place through this process cannot be estimated even roughly, but, we understand, it is not unlikely that it is substantial. Apart from its deleterious effect on legitimate trade, it also entails the outlay of an appreciable amount of public funds on patrol vessels along the sea coasts and permanent works along the land border, and watch and ward staff on a generous scale. It is, therefore, necessary, in our opinion, that stringent measures, both legal and administrative should be adopted with a view to minimising the scope of this evil."

The deleterious effects of smuggling, as pointed out in the extract from the Report, are real and it is not in dispute that the prevention and eradication of smuggling is a proper and legally attainable objective and that this is sought to be achieved by the relevant law. If therefore for the purpose of achieving the desired objective and to ensure that the intentions of Parliament shall not be defeated a law is enacted which operates somewhat harshly on a small section of the public, taken in conjunction with the position that without a law in that form and with that amplitude smuggling might not be possible of being effectively checked, the question arises whether the law could be held to be violative of the

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freedom guaranteed by Art. 19(1)(f) & (g) as imposing an unreasonable restrain. That the restrictions are in the "interest of the general public" is beyond controversy. But is the social good to be achieved by the legislation so disproportionately small that on balance it could be said that it has proceeded beyond the limits of reasonableness? We would answer this in the negative. We would only add that there is authority for the position that "acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable" [vide *Manohar Lal* v. *State of Punjab* (1) and *Ram Dhan Dass* v. *State of Punjab* (2)]. Having given the matter our best attention we have arrived at the conclusion that the impugned legislation has not overstepped the limits set by the Constitution and in saying this we have adopted the test laid down in *State of Madras* v. *V. G. Row* (3) whose terms we have quoted at the start of this discussion.

Proceeding therefore on the basis that the impugned provision was constitutionally valid we have still to consider two further points on the basis of which learned Judges of the High Court upheld the case of the respondent even on the assumption that s. 178A was constitutionally valid. The first of these grounds was that the impugned s. 178A which had been introduced by the Act of 1955 (Act 21 of 1955) is not attracted to the prohibitions enacted by s. 23A of the Foreign Exchange Regulation Act. The reasoning on which this conclusion was reached was that s. 23A, whose terms we have set out, when enacted in 1952 in effect incorporated into the provisions of the Foreign Exchange Regulation Act all the relevant provisions of the Sea Customs Act, 1878, as that

(1) [1961] 2 S. C. R. 343. (2) [1962] 1 S. C. R. 852.
(3) [1952] S. C. R. 597, 607.

enactment stood in 1952, with the result that any subsequent amendments to the Sea Customs Act did not and could not affect, modify or enlarge the scope of the incorporated Sea Customs Act which had become part of the Foreign Exchange Regulation Act. In support of this conclusion the learned Judges of the High Court have relied largely on the decision of the Privy Council in *The Secretary of State for India in Council* v. *Hindustan Co-operative Insurance Society Ltd.* (1). We consider that the legislation regarding which the Privy Council rendered the decision bears no resemblance, whatever to the matter now on hand and that the ruling in *The Secretary of State for India in Council* v. *Hindustan Co-operative Insurance Society Ltd.* (1), cannot therefore furnish any guidance or authority applicable to the interpretation of s. 23A of the Foreign Exchange Regulation Act. To consider that the decision of the Privy Council has any relevance to the construction of the legal effect of the terms of s. 23A of the Foreign Exchange Regulation Act is to ignore the distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making it part of another so much so that the repeal of the former leaves the latter wholly untouched. In the case, however, of a reference or a citation of one enactment by another without incorporation, the effect of a repeal of the one "referred to" is that set out in s. 8(1) of the General Clauses Act :

> "8. (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different

(1) [1931] L.R. 58 I.A. 259.

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intention appears : be construed as references to the provision so re-enacted."

On the other hand, the effect of incorporation is as stated by Brett, L. J., in *Clarke* v. *Bradlaugh*(1):

> "Where a statute is incorporated, by reference, into a second statute the repeal of the first statute by a third does not affect the second".

This is analogous to, though not identical with the principle embodied in s. 6A of the General Clauses Act enacted to define the effect of repeals effected by repealing and amending Acts which runs in these terms :

> "6A. Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

We say 'not identical' because in the class of cases contemplated by s. 6A of the General Clauses Act, the function of the incorporating legislation is almost wholly to effect the incorporation and when that is accomplished, they die as it were a natural death which is formally effected by their repeal. In cases, however, dealt with by Brett, L. J., the legislation from which provisions are absorbed continue to retain their efficacy and usefulness and their independent operation even after the incorporation is effected.

We consider that on the language of the provisions in the two Acts—s. 19 of the Sea Customs Act and s. 23A of the Foreign Exchange Regulation Act—there is no scope for any argument that there

(1) (1881) 8 Q. B. D. 63.

has been any incorporation of the provisions of the earlier statute in the later. We shall repeat the terms of s. 19 of the Sea Customs Act which runs :

> "19. The Central Government may from time to time, by notification in the Official Gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of India across any customs frontier as defined by the Central Government."

Section 8(1) of the Foreign Exchange Regulation Act enables similar notifications by the Central Government in these terms:

> "8. (1) The Central Government may, by notification in the Official Gazette, order that subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed bring or send into India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.
>
> Explanation.—The bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or as the case may be, sending, into India of that article for the purposes of this section."

In this situation s. 23A of the Foreign Exchange Regulation Act enacts:

> ".....the restrictions imposed by sub-section (1).....of section 8.....*shall be deemed to have been imposed under* section 19

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of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly....."

The effect, therefore, of s. 23A is to treat the text of the notification by the Central Government under s. 8(1) as if it had been issued under s. 19 of the Sea Customs Act with the title and the recital of the source of power appropriate to it by the creation of a legal fiction. It would be obvious that in the context and on the language here employed, if s. 19 of the Sea Customs Act were repealed there would no longer be any legal foundation for invoking the penal provisions of the Sea Customs Act to a contravention of a notification under s. 8(1) of the Foreign Exchange Regulation Act.

This conclusion is reinforced by a comparison of the usual and normal or recognized formulae generally employed to effect incorporation, such that changes in or even repeal of the incorporated statute is not intended *per se* to affect the operation of the incorporating legislation. It is sufficient to pick out a few of the well-known formulae employed which would indicate that normally the draftsman does not leave his intentions in doubt. For instance, in s. 20 of 53 and 54 Vict. Ch. 70- -Housing of the Working Classes Act, 1890, the words used were:

> "shall, for that purpose, be deemed to form part of this Act in the same manner as if they were enacted in the body thereof;".

In 54 and 55 Vict. Ch. 19, s. 1(3), the language employed was :

> "The provisions o f s. 134 of the said Act (set out in the schedule) shall apply as if they were herein re-enacted."

To take more modern instances, 10 and 11 George VI Ch. 51, (the Town and Country Planning Act, 1947), s. 44(1) enacts :

"Sections 19 to 30 of the Act of 1944 which provide for the disposal and appropriation by local Planning Authorities of land acquired or appropriated under Part 1 of that Act, for the carrying out by such authorities of development of such land, and for other matters arising in relation to the acquisition of land in that part shall, except so far as repealed by this Act, be incorporated with this part of this Act, subject to the amendments specified in the second column of the 8th Schedule of this Act and of the following provision of this section".

6 & 7 Eliz. 2 Ch. 63 (the Park Lane Improvement Act, 1958), s. 5 reads:

"The Land Clauses Act (other than the excepted provision); so far as they are applicable for the purposes of this Act and are not inconsistent with the provisions thereof, are hereby incorporated with this Act."

A comparison of the formulae with the text of s. 23A shows that the reference in it to s. 19 of the Sea Customs Act is merely for rendering notifications under the named provisions of the Foreign Exchange Regulations Act to operate as notifications under the Sea Customs Act, and that it cannot have the effect of incorporating the relevant provisions of the earlier Act into the Act of 1947, so as to attract the rule formulated by Brett, L. J., in *Clarke* v. *Bradlaugh* already quoted.

A close examination of the decision of the Privy Council in *The Secretary of State for India in Council* v. *Hindustan Co-operative Insurance Society Ltd.* (1) would show that the incorporation effected in the statute there under consideration—the Calcutta Improvement Trust Act, 1911—referred to by their Lordship as the "Local Act" was in express terms and in the form illustrated by 54 & 55 Vict., Ch. 19, just now referred to. The "Local Act" in

(1) (1931) L.R. 58 I.A. 259.

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dealing with the acquisition of Land for the purposes designated by it, made provision for the acquisition under the Land Acquisition Act, and the provisions of the Land Act Acquisition were subjected to numerous modifications which were set out in the Schedule, so that in effect the "Local Act" was held to be the enactment of a Special Law for the acquisition of land for the special purpose. It was in the context of these and several other provisions which pointed to the absorption of certain of the provisions of the Land Acquisition Act into the "Local Act" with vital modifications that their Lordships stated:

> "But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor again, does Act XIX of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from and existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."

It was for this, among other reasons, that the Judicial Committee held that rights of appeal created by amendments effected to the Land Acquisition Act subsequent to the enactment of the Local Act were not attracted to the incorporated provisions in the "Local Act". We consider that there is no analogy between the provisions held to be incorporated in the Calcutta Improvement Trust Act 1911 dealt with by the Privy Council and s. 23A of the Foreign Exchange Regulation Act now under discussion. We hold therefore that when a notification issued under s. 8(1) of the Foreign Exchange Regulation Act is deemed for all purposes to be a notification issued under s. 19 of the Sea Customs Act, the contravention of the notification attracts to it each and every provision of the Sea Customs Act which is in force at the date of the notification.

The other ground upon which the learned Judges upheld the responnent's contention that the rule as to the burden of proof enunciated in s.178 A was not attracted to the present case was based on the finding that the Customs Officer who effected the seizure did not, at the moment of seizure, entertain a reasonable belief that the goods seized were smuggled. The learned Solicitor-General who contested the correctness of this finding did not urge that the words in s. 178A "in the reasonable belief that they are smuggled goods" did not prescribe a condition precedent to the applicability of that provision which had to be satisfied before the provision could be invoked against the affected party. As we have already pointed out, his further submission was that such a reasonable belief must not only be entertained by the seizing officer and besides that the question whether the officer had done so or not, was a matter which could objectively be determined by the adjudicating authority acting under s. 182. And these submissions he made, as aids to his main contention that the burden of proof

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imposed was reasonable. We are pointing this out because before the learned Judges of the High Court the argument apparently advanced was that the test was the subjective belief of the seizing officer which could only be disproved by the establishment of circumstances in which no such belief could ever honestly or reasonably be entertained based on the reference to "the subjectivity of the officer" in the judgment of this Court in *Babulal Amthalal Metha* v. *The Collector of Customs, Calcutta* (1). It was by approaching the problem even from this very narrow stand-point that the learned Judges reached a conclusion on this part of the case favourable to the respondent.

For the decision of this point it is necessary to canvass the facts which occurred at the moment of seizure in some detail. As narrated at the commencement of this Judgment, Nandgopal, the second respondent—the employee of the first respondent was intercepted first by the Head Constable of the Madras State Prohibition Intelligence Department and his clothing was searched and the four gold-blocks weighing about a thousand tolas were seized by the Head Constable. The Prohibition Crime branch has a Criminal Investigation Department and the seized gold was handed over by the Head Constable to the Inspector of Police Criminal Investigation Department on the same day. It was this Inspector (C. Rajamanickam) that forwarded the gold to the Inspector of Customs (Special Division) with a letter in these terms :

> "I send herewith 1,000 (One thousand) tolas of gold in 4 (four) blocks seized from G. Nandgopal, Clerk, M/s. Nathella Sampathu Chetty, Madras, No. 177, N. S. C. Bose Road. The passenger came from Bombay to Madras in N. Y. Bombay Mail on 26th June 1956, at 6 A. M. He has no records

(1) [1957] S.C.R. 1110.

of any kind for the purchase of gold. Hence the gold was seized and he was arrested under a mahazar.

The passenger and gold are forwarded for further action under Customs Act."

It would be seen that up to this point there had been no seizure by an officer acting under the Sea Customs Act within s. 178A of the Act. It has also to be noticed that Nandgopal had in his possession admittedly no receipt of any kind for the purchase of the gold ; further he had on him the letter addressed by the first respondent to Mathuradas Gopalakrishnayya & Co., Bullion merchants, Bombay intimating that cash to the extent of rupees one lakh was being sent through the representative, which obviously could not possibly remain in the possession of Nandgopal if his story about his taking cash to that addressee and the purchase of the gold from him were true. It was in these circumstances that the Inspector (Special Division) Customs House recorded :

"Detained four blocks of gold said to weigh about 1,000 tolas from Shri Nandgopal, representative of Nathella Sampathu Chetty & Sons for further investigation".

There are two views possible of the exact import of this note by the Customs Inspector : (1) that it was a "detention" preliminary to a seizure which would be effected after the further investigation, and (2) that which found favour with the learned Judges of the High Court that it was itself the seizure. In support of the first of the above constructions attention may be drawn to the fact that the events narrated earlier took place before 8 O'clock in the morning and that immediately thereafter Nandgopal was taken to the Customs House and was examined there at about 8.30 and in the course of his examination he made several statements which were obviously incorrect and whose error was capable of being detected then and there.

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(1) He stated that the gold had been bought from M/s. Mathuradas Gopalakrishnayya & Co. having paid them the sum of rupees one lakh which was referred to in the letter seized from him, but obviously if the gold had been purchased from that firm the letter could not remain with Nandgopal and this discrepancy he was unable to explain at that stage, for he said "I cannot account for the presence of this letter on me which should have been given to the firm in Bombay". (2) Nandgopal who spoke to having received gold and then secreted it in the inner side pockets of his waist coat and stitched it stated, that the gold was moosa gold and it was found that the gold seized from him was not that variety. It is really after this statement was recorded at the Customs House that the "investigation" began. It is therefore possible to take the view that the detention resulted in a seizure after the statement was recorded. There was ample material at that stage on the basis of which it could be said that a reasonable belief could be entertained that the gold seized was smuggled.

Even taking the record of the detention in the mahazar prepared at the Central station as "the seizure" we do not agree with the learned Judges of the High Court that the seizing-officer could not entertain a reasonable belief that the gold seized was smuggled. The reasonableness of the belief has to be judged by all the circumstances appearing at that moment. In the present case, the quantity of gold in the possession of Nandgopal—of the value of over one lakh of rupees—was certainly a very relevant factor to be taken into account and which could be considered in judging the matter. No doubt, such a quantity could be the subject of *bona fide* purchase in the course of normal trade, particularly when the person in possession was the representative of a well-known firm of bullion dealers. But one

would also normally expect that the representative would have secured a bill or voucher to evidence the purchase. In other words: (1) it was not a case of a few trinkets of gold or small quantity purchased for domestic or personal use but a considerable amount for purposes of business, (2) the undelivered letter addressed to M/s. Mathuradas Gopalakrishnayya and Co., which admittedly had a bearing upon the purchase of gold in the possession of Nandgopal necessarily drew an amount of suspicion on the theory of a bona fide purchase. These circumstances, in our opinion, which were admittedly present at the moment when the gold was taken by the Customs Officer at the Central Station did tend to raise a reasonable suspicion that the gold seized had been obtained illicitly and this was sufficient to constitute, in the words of the statute, "a reasonable belief that the goods (gold) were smuggled".

We are therefore of opinion (1) that s.178A was constitutionally valid, (2) that the rule as to the burden of proof enacted by that section applies to a contravention of a notification under s. 8(1) of the Foreign Exchange Regulation Act, 1947, by virtue of its being deemed to be a contravention of a notification under s. 19 of the Sea Customs Act, (3) that the preliminary requirement of s. 178A that the officer seizing should entertain "a reasonable belief that the goods seized were smuggled" was satisfied in the present case. The result therefore is that the petitions under Art. 226 of the Constitution filed by the respondent before the High Court should have been dismissed. We accordingly allow appeals 408 and 409 with costs throughout (one set of hearing fees), the writ petitions filed by the respondent being directed to be dismissed. In view of our decision in appeals 408 and 409, the points raised by the respondent in appeal 410 of 1960 do not require to be decided. That appeal fails and is dismissed. There will however, be no order as to costs.

1961

The Collector of Customs, Madras v. Nathella Sampathu Chetty

Ayyangar J.

Criminal Appeals No. 38 of 1959, No. 126 of 1959, No. 123 of 1959, Civil Appeal No. 511 of 1960 and Writ Petition No. 118 of 1958 were not heard on the merits and we have not examined the facts of any of those cases. Those appeals and petitions should, therefore, be posted for hearing in the usual course.

Appeals nos. 408 and 409 allowed.

Appeal no. 410 dismissed.

1961

September 25.

SAKAL PAPERS (P) LTD., AND OTHERS

v.

THE UNION OF INDIA

(B. P. SINHA, C. J., A.K. SARKAR, K.C. DAS GUPTA, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Fundamental Right—Freedom of speech—Statute regulating number of pages in newspaper according to price charged—Constitutionality of—Newspaper (Price and Page) Act, 1956 (45 of 1956)—Daily Newspaper (Price and Page) Order, 1960—Constitution of India, Art. 19 (1) (a).

The Newspaper (Price and Page) Act, 1956, empowered the Central Government to regulate the prices of newspapers in relation to their pages and sizes and to regulate the allocation of space for advertising matter. Under this Act the Central Government made the Daily Newspapers (Price and Page) Order, 1960, thereby fixing the maximum number of pages that might be published by a newspaper according to the price charged and prescribing the number of supplements that could be issued. The petitioner challenged the Act and the order as contravening Art. 19 (1) (a) of the Constitution.

Held, that the Act and the Order were void as they violated Art. 19(1) (a) of the Constitution and were not saved by Art. 19(2). The freedom of speech and expression guaranteed by Art. 19(1) (a) included the freedom of the press. For propagating his ideas a citizen had the right to publish them, to disseminate them and to circulate them, either by word of mouth or by writing. The right extended not merely to the matter which he was entitled to circulate but also to the