The appeal must therefore be allowed and the order passed by the High Court set aside. In the circumstances of the case, no useful purpose will be served by remanding the case to the High Court. We accordingly direct that a writ quashing the proceedings commenced by the Superintendent of Taxes, Dhubri, by his notice dated January 30, 1953, be issued. The appellants will be entitled to their costs of the appeal.

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Shah J.

Appeal allowed.

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THE STATE OF RAJASTHAN AND OTHERS.

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October 19.

(JAFER IMAM, A. K. SARKAR and RAGHUBAR DAYAL, JJ.)

Landlord and Tenant—General refusal of payment of rent—Notification by Government—Application for recovery of rent as arrears of land revenue—Rescission of notification—Validity of proceeding—Procedure—Marwar Tenancy Act, 1949 (XXXIX of 1949), s. 85—Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 (1 of 1951), s. 2.

The Marwar Tenancy Act, 1949, now repealed but which was in force in the State of Jodhpur at the relevant period, by s. 85 authorised the Government in case of any general refusal by tenants to pay rent to declare by notification that such rents might be recovered as arrears of land revenue. A notification having been issued by the Government of Rajasthan under that section the appellant, a jagirdar, applied to the Collector thereunder for the recovery of rents due to him from his tenants. The tenants also applied to the Collector stating that notice of the said application should be served on them and they should be given a hearing as required by the rule framed under the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951. The Collector rejected the tenants' application and passed an order directing the recovery of the sum found to be due to the appellant as arrears of land revenue. The Additional Commissioner on appeal and the Board of Revenue in revision upheld the Collector's order. But before the Board passed its order the

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Government rescinded the notification. The High Court on an application under Art. 226 of the Constitution held that although s. 85 of the Tenancy Act had not been repealed by the Revenue Courts Act, 1951, the rules framed under that section had been, and the non-compliance with the rules framed under the latter Act which should have been followed, was an error on the face of the record and quashed the orders directing that since the notification under s. 85 of the Tenancy Act had been rescinded no further action thereunder should be taken by the Collector.

Held, that there could be no doubt that s. 2 of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, had not repealed s. 85 of the Marwar Tenancy Act, 1949, and that the former Act contemplated its continuance, unfettered by the bar of limitation, and subject to this modification that an application under the section was no longer to be made to the Deputy Commissioner but to the Collector.

Section 85 of the Tenancy Act clearly contemplated that an application thereunder shall be heard and determined in the absence of the tenant. The right given by the section was a summary one and the application must be heard ex parte. It was not, therefore, necessary to serve any notice on the tenants.

It would not be correct to hold that the procedure of a contested proceeding as prescribed by Ch. II of the Rules framed under the Revenue Courts (Procedure and Jurisdiction) Act, 1951, could apply to the application for to apply them would be to wholly defeat its object.

Once a notification under the section had been issued and an application duly made, subsequent rescission of the notification could not divest the appropriate authority of the power already vested in him to dispose of the application.

Crown v. Vaveli, A.I.R. 1949 Lah. 191, held inapplicable.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 277 of 1955.

Appeal from the judgment and order dated April 27, 1954, of the Rajasthan High Court in Civil Mis. Writ No. 1/1954.

N. C. Chatterjee, *Suresh Agarwal* and *Ganpat Rai*, for the appellant.

R. K. Rastogi and *K. L. Mehta*, for the respondents.

1960. October 19. The Judgment of the Court was delivered by

Imam J.

IMAM J.—The appellant was the Jagirdar of Thikana Rakhi in the Marwar (Jodhpur) area of the State of Rajasthan. Within Thikana Rakhi was the

village of Khakharki. He had a number of tenants under him in the village who paid rent on the basis of a certain share of the produce of the land held.

There was an Act in force in the Marwar area called the Marwar Tenancy Act of 1949, hereafter referred to as the Tenancy Act, which had been passed by His Highness the Maharaja of Jodhpur before the integration of the State of Jodhpur in the State of Rajasthan. That Act now stands repealed but we are concerned with a period when it was in force. Section 78 of that Act provides that when rent is payable by a division of the produce or is based on an estimate or appraisement of the standing crop, the landlord or the tenant may apply to the Tahsildar for making the division, estimate or appraisement, when this could not be done amicably. Section 79 of the Tenancy Act lays down the procedure to be followed at the hearing of such an application and provides that any amount found due as rent by the Tahsildar on that application shall have the effect of a decree for arrears of rent.

On October 31, 1950, the appellant who had some difficulty in realising the rent from his tenants in village Khakharki, made an application under s. 78 of the Tenancy Act to the Tahsildar, Merta, within which the village Khakharki was situate. Before this application was finally disposed of, the Government of Rajasthan issued a Notification under s. 85 of the Tenancy Act which is set out below:

Jaipur, February 22, 1951. No. F. 4(74) Rev./1/51.—Whereas it has been made to appear that the cultivators of the villages mentioned in the Schedule below have refused to pay rent to the persons entitled to collect the same;

Now, therefore, in exercise of the power conferred by sub-sec. (1) of sec. 85 of the Marwar Tenancy Act, 1949 (No. XXXIX of 1949), the Government of Rajasthan is pleased to declare that such rents may be recovered as arrears of land revenue.

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by order of
His Highness the Rajpramukh,
H. D. Ujwal
Secretary to the
Government of Rajasthan,
Revenue Department.

This Notification was published in the Official Gazette on March 3, 1951, and one of the villages mentioned in the Schedule to it, was Khakharki. In view of the Notification, the appellant became entitled under s. 85, the terms of which will be set out later, to have the rents due to him from the tenants of Khakharki realised as arrears of land revenue. Accordingly, on March 9, 1951, he filed an application under that section in the Court of the Collector, Nagaur, within whose jurisdiction lay the village of Khakharki for recovery as arrears of land revenue of the rents due to him for 1950-51 from those tenants of Khakharki who had refused to pay them. Subsequently, on March 26, 1951, the appellant's application under s. 78 of the Tenancy Act was dismissed for reasons which it is not necessary for the purpose of this appeal to state.

On March 29, 1951, the tenants filed an application in the Court of the Collector of Nagaur stating that the notice of the appellant's application under s. 85 of the Tenancy Act should be served on them and they should be heard on that application as this was required by the rules framed under the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act of 1951, hereinafter referred to as the Revenue Courts Act, which governed that application. The Revenue Courts Act was an Act passed by the Rajpramukh of the State of Rajasthan with which the State of Jodhpur had integrated prior thereto, and it applied to the whole State of Rajasthan, including the Marwar area. This Act came into force on January 31, 1951. This application by the tenants was rejected by the Collector. Thereafter, on April 5, 1951, the Collector passed an order by which a total sum of Rs. 38,587-3-0 was found due to the appellant from the tenants on account of rent, other charges and court fees. The

Collector then sent the order to the Tahsildar of Merta for recovering that sum as arrears of land revenue.

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The tenants filed an appeal before the Additional Commissioner, Jodhpur, challenging the validity of the order of the Collector dated April 5, 1951. This appeal was dismissed by the Additional Commissioner on November 2, 1951. The tenants then went in revision to the Board of Revenue, Rajasthan. The Board of Revenue took the view that the Revenue Courts Act had not affected the procedure to be followed on the hearing of an application under s. 85 of the Tenancy Act but it remanded the case to the Additional Commissioner as the tenants contended that the Additional Commissioner had not decided other points that arose in the appeal to him. The Additional Commissioner heard the tenants on the other points and again dismissed their appeal on July 7, 1952.

The tenants moved the Board of Revenue in revision against the order of July 7, 1952, also. Before the Board of Revenue could decide the revision case, the Government of Rajasthan on November 1, 1952, published another Notification rescinding the earlier Notification dated February 22, 1951, issued under s. 85 of the Tenancy Act. One of the points argued before the Board of Revenue in this revision case was that in view of the rescission of the Notification, no further proceedings could be taken under s. 85 of the Tenancy Act for recovery of rent as arrears of land revenue. The Board of Revenue rejected this and all other contentions raised on behalf of the tenants and dismissed the revision case on September 29, 1953.

Fortythree of the tenants filed a petition in the High Court for Rajasthan for a writ of certiorari to quash the orders of the Collector, the Additional Commissioner and the Revenue Board, earlier mentioned. The High Court allowed the petition and quashed and set aside these orders and held that the Notification under s. 85 of the Tenancy Act having been cancelled, no further proceedings for realisation of arrears of rent as arrears of land revenue could be taken by the Collector of Nagaur. The High Court however granted a certificate that the case was a fit one for appeal

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to the Supreme Court. Hence the present appeal. The rent found due has not been realised yet by the Tahsildar presumably, in view of the pending proceedings. The respondents to the appeal are the State of Rajasthan and various Revenue Officers of that State and the tenants. This appeal has been contested only by some of the tenants and the other respondents have not appeared before us.

Section 85 of the Tenancy Act is in these terms:

S. 85.—"(1) In case of any general refusal to pay rent to persons entitled to collect the same in any local area the Government may, by notification in the Official Gazette, declare that such rents may be recovered as arrears of land revenue.

(2) In any local area to which a notification made under sub-sec. (1) applies a landlord or any other person to whom an arrear of rent is due, may notwithstanding anything to the contrary in this or any other enactment for the time being in force, instead of suing for recovery of the arrear under this Act apply in writing to the Deputy Commissioner to realise the same, and the Deputy Commissioner shall after satisfying himself that the amount claimed is due, proceed subject to the rules made by the Government to recover such amount with costs and interest as an arrear of land revenue.

(3) The Deputy Commissioner shall not be made a defendant in any suit in respect of an amount for the recovery of which an order has been passed under this section.

(4) Nothing herein contained and no order passed under this section shall debar:—

(a) a landlord from recovering by suit or application any amount due to him which has not been recovered under this section;

(b) a person from whom any amount has been recovered under this section, in excess of the amount due from him, from recovering such excess by suit against the landlord or other person on whose application the arrear was realised.

The first point raised on behalf of the respondents in the High Court was that s. 85 of the Tenancy Act

had itself been repealed by the Revenue Courts Act and no action under that section could be taken after the latter Act had come into force.

The Revenue Courts Act was repealed in 1955 after the judgment of the High Court was delivered but this does not affect the question before us. The long title of the Act states that the Act is intended to provide for and regulate the jurisdiction and procedure of Revenue Courts and Officers, in Rajasthan. The preamble states "Whereas it is expedient, pending the enactment of a comprehensive law for the whole of Rajasthan relating to agricultural tenancy, land tenures, revenue, rent, survey, record, settlement and other matters connected with land, to provide for and regulate the jurisdiction and procedure of revenue courts and officers in relation to such matters arising under the laws in force in the covenanting States of Rajasthan". Jodhpur was one of the covenanting States and one of the laws in force there, was the Tenancy Act. This Act continued to apply to the territories belonging to the former Jodhpur State which since the integration, formed part of the State of Rajasthan, till that Act was repealed as hereinbefore stated. Section 2 of the Act provides, "On and from the coming into force of this Act all existing laws shall, in so far as they relate to matters dealt with in this Act, be repealed". It is said that the effect of s. 2 of the Revenue Courts Act is to repeal s. 85 of the Tenancy Act. The High Court was unable to accept this contention and we think rightly. Section 85 of the Tenancy Act would be repealed only if the Revenue Courts Act contained any provision dealing with the matter covered by it. We find no such provision in the Revenue Courts Act. The Revenue Courts Act deals with matters of jurisdiction and procedure of Revenue Courts. It does not deal with any substantive right. This is clear from the provisions of the Revenue Courts Act and, indeed, is not in dispute. Quite clearly, s. 85 creates, on the requisite notification being issued, a substantive right in a landlord to have the rent due to him recovered as arrears of land revenue. We do not find any provision

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in the Revenue Courts Act dealing with the substantive right created by s. 85 of the Tenancy Act. There is, therefore, no foundation for the argument that that section has been repealed by s. 2 of the Revenue Courts Act.

A reference to schedule 1 to Revenue Courts Act which gives a list of suits and applications triable by a Revenue Court and prescribes the periods of limitation applicable to and court fees payable on them can usefully be made now. The schedule is divided into several groups, of which group C contains a list of applications triable by a Collector. Item 2 of this group concerns applications "for realisation of rent as land revenue on the general refusal to pay rent". In regard to the period of limitation for such applications, it is stated there that none exists. We have no doubt that item 2 of group C in the schedule does not confer a substantive right to make an application for realisation of rent as land revenue at all. The purpose of the schedule appears from ss. 7, 9 and 10 of the Act which respectively provide that the jurisdiction of the various revenue courts, the periods of limitation for proceedings maintainable in these Courts and the court fees payable thereon are as stated in the schedule. The schedule is not operative by itself. So item 2 of group C in the schedule does not confer any right to apply for collection of rent as arrears of land revenue. On the other hand, the mention of such an application in the schedule clearly indicates that the Revenue Courts Act recognises that such an application is competent. Since the Revenue Courts Act itself does not authorise such an application, it must be so competent under other existing laws, reference to which has been made in the preamble and s. 2 of the Act. One of such laws is s. 85 of the Tenancy Act. Therefore it seems to us that the Revenue Courts Act, instead of repealing s. 85 of the Tenancy Act contemplates its continuance in force.

It is necessary before leaving this part of the case to refer to Ch. XIII of the Tenancy Act which deals with procedure and jurisdiction. It consists of ss. 118 to 144. Section 118 says that all suits and applications of the nature specified in the second schedule to

the Act shall be heard and determined by a Revenue Court. Section 124 states that all suits and other proceedings especified in the second schedule shall be instituted within the time prescribed for them in that schedule. Section 129 provides that a Deputy Commissioner shall have power to dispose of applications specified in group E of the second schedule. It is not necessary to refer to the other sections in this Chapter. Turning to second schedule, we find that group E is concerned with applications triable by a Deputy Commissioner. Item 4 of this group deals with applications under s. 85 " for collection of rent as land revenue in the event of general refusal to pay ". The period of limitation for such applications is stated there to be " so long as notification remains in force " and this period is stated to commence from the time when the notification under the section is published in the Official Gazette.

Now the Revenue Courts Act provides by s. 7 that all suits and applications of the nature specified in the first and second schedules shall be heard and determined by a revenue court. A revenue court is defined in s. 4(xvi) of this Act as including among others, the Board of Revenue, the Commissioners and the Collectors. We have earlier stated that item 2 of group C in the first schedule to this Act refers to an application under s. 85 of the Tenancy Act, and provides that there shall be no period of limitation for making such an application, and that it shall be made to a Collector. Therefore, for an application under s. 85 of the Tenancy Act the Revenue Courts Act specifies a new revenue court, namely, the Collector, in the place of the Deputy Commissioner mentioned in s. 85 of the Tenancy Act and also makes it free of the bar of limitation. It follows that ss. 7 and 9 of the Revenue Courts Act deal with matters dealt with in ss. 118, 124 and 129 of the Tenancy Act. By virtue of s. 2 of the Revenue Courts Act, ss. 118, 124 and 129 of the Tenancy Act will have to be taken as repealed. There would also consequently be a repeal of item 4 of group E in the second schedule to the Tenancy Act. The position then is that since the coming into force of

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the Revenue Courts Act, there is no period of limitation prescribed for making an application under s. 85 of the Tenancy Act and that application has to be made to a Collector. The application under s. 85 by the appellant in the present case had been made to the Collector, as at the date when it was made the Revenue Courts Act was in force. The repeal of ss. 118, 124 and 129 of the Tenancy Act does not however affect s. 85 of this Act except as hereinbefore stated.

Next it is said that even though s. 85 of the Tenancy Act may not have been repealed, the procedure to be followed in respect of an application made under it is in view of r. 114 in Ch. IV of the rules framed under the Revenue Courts Act is that laid down in Ch. II of these rules and that that procedure was not followed. This, it is contended, constitutes an error apparent on the face of the orders passed by the revenue authorities in this case, and renders them liable to be set aside.

A reference has now to be made to the rules framed under s. 85 of the Tenancy Act. These rules, so far as relevant for our purpose, prescribe that an application by the landlord under the section shall be accompanied by a list in a prescribed form in which is to be stated the dues of the landlord for canal charges, rent, interest and court fees. Rule 34 provides that the Deputy Commissioner shall check the lists by examining the Patwari or by any other suitable method and thereafter enter in the appropriate column in the form, the amounts passed by him as due to the landlord. Under r. 35 he has thereafter to send the list to the Tahsildar who shall then proceed to realise the amount stated in the list by the Deputy Commissioner to be due to the landlord.

It is said on behalf of the tenants that the rules under s. 85 lay down the procedure for the disposal of an application made under that section, and that these rules have been repealed by s. 2 of the Revenue Courts Act, read with r. 114 of the rules framed under that Act. It is contended that the revenue authorities committed an error in following the rules framed

under s. 85 of the Tenancy Act and not those prescribed in Ch. II of the rules made under the Revenue Courts Act.

Now Ch. IV of the rules framed under the Revenue Courts Act consists only of r. 114. That rule provides that the procedure laid down in Ch. II of the same rules shall be followed, so far as it can be made applicable, in all proceedings in revenue courts. In view of s. 7 of the Revenue Courts Act, an application under s. 85 of the Tenancy Act must, since the coming into force of the former Act, be heard and determined by a revenue court. Such an application therefore gives rise to a proceeding in a revenue court and such a proceeding must, it is said, in view of r. 114 be according to the procedure prescribed by Ch. II of the rules framed under the Revenue Courts Act.

It is enough for our purposes to say that Ch. II lays down a procedure for a contested matter, that is to say, it requires that notice of the proceedings should be issued to the respondent to it and he should be given a hearing. It is unnecessary to refer to the detailed procedure prescribed in this chapter for, as no notice of the application had in fact been given to the tenants in this case and they had not been heard on it, it must be held that the procedure laid down in that chapter had not been followed.

The High Court accepted the contention of the tenants that the rules framed under s. 85 of the Tenancy Act had been repealed and that the rules in Ch. II of the rules framed under the Revenue Courts Act applied and should have been followed. It therefore held that there was an error apparent on the face of the record and thereupon set aside the orders of the revenue authorities challenged by the tenants.

We have given our anxious consideration to this question but have been unable to agree with the view taken by the High Court. It seems to us that the rules made under s. 85 of the Tenancy Act had not laid down any special procedure. The only rule relevant in this connection is r. 34 to which we have earlier referred. All that that rule does is to require

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the Deputy Commissioner to check the list, a duty which under the section itself he has to perform, and also makes it necessary for him to examine the patwari for the purpose. The rules do not indicate how the application is to be heard, that is, whether ex parte or on notice.

It seems clear to us that s. 85 itself requires an application made under it to be heard ex parte. First the section does not say that a notice of the application has to be served on the tenant concerned. Secondly, an application under the section can be made only after the notification prescribed has been issued. That notification decides that there has been a general refusal by tenants to pay rent. Therefore the section could not have contemplated that the question whether a tenant had so refused would be heard again on notice to him. Thirdly, in proceedings for recovery of land revenue, the persons liable are not heard and therefore when rent is directed to be recovered as land revenue, it is not contemplated that the tenants should be heard. It is of the essence of such proceedings that there shall be a summary and quick decision. If the procedure laid down in Ch. II of the rules framed under the Revenue Courts Act has to be followed, the entire object of s. 85 of the Tenancy Act would, in our view, be defeated. It seems to us that s. 85 would then really become redundant for then it would contemplate an application for realisation of rent giving rise to a contested proceeding governed by the procedure of a suit and would be a duplication of s. 78 of the Tenancy Act earlier referred to or of s. 80 of the same Act which provides for a suit in a revenue court for the recovery of rent both of which have to be heard as contested proceedings in the presence of the other side. Fourthly, cl. (b) of sub-sec. (4) of s. 85 of the Tenancy Act plainly indicates that the proceeding on an application under that section is to be ex parte. That clause contemplates a suit against a landlord by a tenant from whom an amount in excess of what is legally due has been recovered under the section. Now the amount recovered cannot of course exceed the amount

passed as due by the Deputy Commissioner. So the suit contemplated in s. 85(4)(b) would really be one to contest the correctness of the finding of the Deputy Commissioner as to the amount due. It would be inconceivable that such would be contemplated under the section if the amount has to be decided by the Deputy Commissioner after hearing the tenant. It is clearly not necessary that two contested proceedings, one after the other, in respect of the same question, between the same parties should be provided for.

It seems, therefore, quite clear to us that s. 85 of the Tenancy Act contemplates that the application made under it shall be heard and determined in the absence of the tenant. Indeed this is not really questioned, for, the contention on behalf of the tenants is that the procedure followed is wrong, not because that is not the procedure laid down in the Tenancy Act, but because the Revenue Courts Act and the rules made thereunder had replaced the ex parte procedure provided by the Tenancy Act, by the procedure of a contested proceeding laid down in Ch. II of the rules framed under the Revenue Courts Act and this is the procedure which should have been followed.

Now, once it is found, as we have found, that s. 85 of the Tenancy Act has not been repealed by the Revenue Courts Act except to the extent that an application under it has now to be made to a Collector and not to a Deputy Commissioner as provided in it, the whole of it has to be given effect to. The procedure contemplated by the section is an integral part of the right granted by it, and one cannot be separated from the other. The application made under it has, therefore, still to be heard and determined ex parte.

Rule 114 of the rules framed under the Revenue Courts Act earlier referred to can be of no assistance to the tenants in the present context. It does not in terms purport to repeal s. 85 of the Tenancy Act. We have earlier said the Revenue Courts Act contemplated the continuance in force of s. 85 of the Tenancy Act, and hence no rule framed under the former Act

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could intend by implication to repeal that section. Rule 114 may apply to applications under other provisions of existing laws which are not required by them to be heard ex parte.

In our view, for the reasons aforesaid, the application under that section was properly and correctly heard and determined without notice to the tenants. Such hearing does not disclose any error at all.

Then it is said that after the rescission of the Notification dated February 22, 1951, no further proceeding could be taken under s. 85 of the Tenancy Act. This contention also found favour with the High Court and with this view again we are unable to agree. Sub-section (1) of that section provides for the issue of a notification declaring that certain rents may be recovered as arrears of land revenue. Sub-section (2) states that "in any local area to which a notification made under sub-section (1) applies, a landlord......to whom an arrear of rent is due, may...........apply in writing to the Deputy Commissioner to realise the same, and the Deputy Commissioner shall after satisfying himself that the amount claimed is due, proceed ......to recover such amount......as an arrear of land revenue." It is contended that the words "in any local area to which a notification made under sub-section (1) applies" govern both the application by the landlord and the action of the Deputy Commissioner following thereon and therefore the Deputy Commissioner cannot after the rescission of the notification, take any action under the section at all.

It seems to us that this contention of the tenants is not warranted by the language of the section. The words "in any local area to which a notification made under sub-section (1) applies" are concerned with the area and not with the time during which the notification remains in force. That follows from the words "in any local area". There is no reference anywhere to the currency of the notification in point of time. Item 4 of group E in schedule II to the Tenancy Act earlier referred to, leads to the same conclusion. That item provides that the period of limitation for an application under s. 85 is so long as notification

remains in force. It is clear that if in sub-sec. (2) the words "in any local area to which a notification applies" meant, during the currency of the notification in point to time, there would have been no need to specify a period of limitation in schedule II. We have also earlier pointed out that item 4 of group C in schedule II has been repealed by the corresponding provisions in the Revenue Courts Act. Since the latter Act came into force, the position is that there is no period of limitation for an application under s. 85 of the Tenancy Act. It is impossible, therefore, to contend that the words "in any local area to which a notification made under sub-section (1) applies" indicate that the Deputy Commissioner's power to act when an application under that section is made, exists only so long as the notification remains in force.

It also seems to us that the Deputy Commissioner's power to act arises on an application having been duly made under sub-sec. (2) of s. 85. Even if that application had to be made within the period that the notification remained in force, there would be nothing in sub-sec. (2) to lead to the conclusion that the Deputy Commissioner's power to act on the application would also depend on the notification remaining in force. It may be stated here that in the present case the application had been made before the Notification had been rescinded. Once the notification under s. 85 is issued, power is certainly vested in the appropriate Revenue officers to deal with and dispose of an application made under that section at a time the notification was in force and applied to the particular area. Subsequent cancellation of the notification would not divest the appropriate authority of the power already vested in him to dispose of the application which was properly and duly made under s. 85. In our view, steps can be taken under s. 85 of the Tenancy Act by the appropriate Revenue Officer for realisation of rent found due as arrears of land revenue even after the notification under that section has been rescinded.

Reliance is placed by the learned advocate for the respondents on *Crown* v. *Haveli* (1). In that case it

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was held that further proceedings under a temporary Act could not be continued after it had expired. It is contended that s. 85 of the Tenancy Act was really a temporary Act for it was brought into operation only upon a notification which notification was clearly not intended to be of permanent operation. We are unable to accept this view. The fact, if this be so, that s. 85 is brought into operation by a notification, and that that notification may not be of permanent operation, does not make the section a temporary enactment. We do not think that the principles applicable to interpretation of temporary Acts apply to the case of a provision like s. 85 of the Tenancy Act.

Reliance is also placed on cl. (a) of sub-sec. (4) of s. 85 of the Tenancy Act. It is said that this clause by permitting suits for recovery of rents which have not been recovered under the section, indicates that after the rescission of the Notification, further proceedings cannot be taken under the section. It is contended that cl. (a) contemplates that it may so happen that when a notification is rescinded, the whole amount of rent in respect of which the application under s. 85 had been made, had not been recovered and that cl. (a) permits suit to be filed in respect of the amount which remained unrealised at the date the notification is rescinded. This argument seems to us to beg the question, for, it proceeds on the basis that the suit contemplated by cl. (a) is for the amount of rent which cannot be recovered under the section any more because of the rescission of the notification. Clause (a) however may clearly apply to a case where in spite of a notification under the section, the landlord whether during its currency or later, chooses to proceed by way of a suit under the other provisions of the Tenancy Act.

It is then contended on behalf of the tenants that the Notification of February 22, 1951, was not a valid notification because out of 125 tenants in village Khakharki 82 had paid rent and the remaining 43, who are the respondents in this appeal, were willing to pay but could not pay as the appellant was asking

for larger sums than what were legitimately due to him. It is contended that on these facts it could not be said that there was a general refusal to pay rent within the meaning of s. 85 of the Tenancy Act. Hence, it is said that the Notification was *ultra vires* the section and inoperative. We do not think that the tenants can be allowed to raise this point in this Court. It does not appear to have been raised in the High Court. The High Court's judgment makes no mention of it. Whether it is open for a Court to go behind the notification issued under s. 85 and decide its validity or not, this contention of the tenants raises a question of fact as to how many tenants had refused to pay rent. It also raises a question of interpretation of the words "general refusal to pay" in s. 85. None of these questions was raised at any earlier stage. We are therefore, not inclined to allow the tenants to raise them now.

In the result we allow the appeal with costs here and below.

Appeal allowed.

P. C. JOSHI AND ANOTHER
v.
THE STATE OF UTTAR PRADESH

1960

October 25.

(S. K. DAS and J. C. SHAH, JJ.)

Criminal Trial—Defamation of public servant in respect of public function—Complaint before Sessions Judge by Public Prosecutor—If required to be signed by the public servant also—Code of Criminal Procedure, 1898 (V of 1898), ss. 198 and 198-B.

The Public Prosecutor, Kanpur, filed a complaint in the Court of Session, Kanpur, charging the appellants with having published a news item which was false and defamatory of the Chief Minister of Uttar Pradesh. The complaint complied with the requirements of s. 198-B, Code of Criminal Procedure. The appellants contended that the complaint should have complied with the requirements of s. 198 of the Code also and, as it was