rectness of the decree for the amount of interest *pendente lite* independently of the claim to set aside that decree. The appellant here has not specifically challenged the decree in that respect and therefore the High Court is right in holding the memorandum of appeal to be sufficiently stamped. The appeal is therefore dismissed with costs.

Appeal dismissed.

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MANGILAL
v.
SUGANCHAND RATHI

(P.B. GAJENDRAGADKAR, K. SUBBA RAO, K.N. WANCHOO, N. RAJAGOPALA AYYANGAR AND J.R. MUDHOLKAR JJ.)

Madhya Pradesh Accommodation Control Act, 1955 (23 *of* 1955), *s.* 4(*a*)—*Notice—Whether tenant should in arrears on the date of suit—Acceptance of arrears—If right under notice waived—Transfer of Property Act*, 1882 (4 *of* 1882), *s.* 106.

The defendant was a tenant of the plaintiffs. The defendant was in arrears of rent for one year to the extent of Rs. 1,020. On April 11, 1959 the plaintiffs served a notice on the defendant requiring him to remit to them Rs. 1,020 within one month from the date of service of notice, failing which suit for ejectment would be filed. This notice was received by the defendant on April 16, 1959. On June 25, 1959 the defendant sent a reply to the notice enclosing with it a cheque for Rs. 1,320. This amount consisted of the rental arrears as well as the rent due right up to June 30, 1959. The plaintiffs accepted the cheque and cashed it and gave a fresh notice on July 9, 1959 requiring the defendant to vacate the premises by the end of the month of July. The defendant did not vacate the premises.

Then the plaintiffs filed a suit to eject the defendant upon the ground that the latter was in arrears of rent for one year and had failed to pay the arrears within one month of the service of the notice dated April 11, 1959 upon him. From the undisputed facts it was clear that the defendant was in fact in arrears of rent and had failed to pay it within the time prescribed by cl. (a) of s. 4 of the Madhya Pradesh Accommodation Control Act, 1953.

Held: (*i*) Though the notice dated April 11, 1959 could be construed to be composite notice under s. 4(a) of the accommodation Act and s. 106 of the Transfer of Property Act it was ineffective

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under s. 106 of the Transfer of Property Act because it was not a notice of 15 clear days. In the present case, the defendant had only 14 clear days' notice.

Subadini v. *Durga Charan Lal*, I.L.R. 28 Cal. 118 and *Gobind Chandra Saha* v. *Dwarka Nath Patita*, A.I.R. 1915 Cal. 313, approved.

Harihar Banerji v. *Ramsashi Roy*, L.R. 45 I.A. 222, distinguished.

(*ii*) The suit was actually based upon the notice dated July 9, 1959 which gave more than 15 days' clear notice to the defendant to vacate the premises. This notice was a valid notice under s. 106 of the Transfer of Property Act.

(*iii*) The contention that a suit under cl. (a) of s. 4 of the Act is not maintainable unless a tenant is in arrears on the date of the suit, cannot be sustained. If this contention had to be accepted it would be virtually re-writing the section by saying "that the tenant was in arrears of rent at the date of suit" in place of that the "tenant has failed to make payment etc." It is certainly not open to a court to usurp the functions of a legislature. Nor again, is there scope for placing an unnatural interpretation on the language used by the legislature and impute to it an intention which cannot be inferred from the language used by it by basing ourselves on ideas derived from other laws intended to give protection to the tenants from eviction ay landlords.

(*iv*) The ground set out in cl. (a) of s. 4 need not be shown by the landlord to exist at the date of institution of the suit. All that is necessary for him to establish is that the tenant was in fact in arrears, that he was given one month's notice to pay up the arrears and that in spite of this he failed to pay these arrears within one month of service of notice on him.

(*v*) The effect of cl. (a) of s. 4 is merely to remove the bar created by the opening words of s. 4 on the right which a landlord has under s. 106 of the Transfer of Property Act to terminate a tenancy of a tenant from month to month by giving a notice terminating his tenancy. The character of the tenancy as one from month to month remains; but to it is added a condition that the unfettered right to terminate the tenancy conferred by s. 106 will be exercisable only if one of the grounds set out in s. 4 of the Accommodation Act is shown to exist.

(*vi*) By cashing the cheque for Rs. 1,320 the plaintiffs did not waive all rights which accrued to them under the notice dated April 11, 1959. No right under s. 106 of the Transfer of Property Act had accrued to them because of the ineffectiveness of the notice in so far as the termination of tenancy was concerned and, therefore, no question of waiver with respect to that part of the notice arises. So far as the right accruing under s. 4(a) of the Accommodation Act is concerned, the defendant having been under liability to pay rent even after the giving of notice the acceptance of the rent by the plaintiffs would not by itself of operate as waiver.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 307 of 1963.

Appeal by special leave from the judgment and decree dated September 27, 1962, of the Madhya Pradesh High Court in Second Appeal No. 158 of 1962.

S.V. Gupte, Additional Solicitor-General of India, O.C. Mathur, Revindra Narain and *J.B. Dadachanji*, for the appellant.

M.C. Setalvad, Rameshwar Nath and *S.N. Andley*, for the respondents.

October 24, 1963. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR J.—This is an appeal by special leave against the judgment of the High Court of Madhya Pradesh dismissing the defendant's appeal in which he had challenged the decision of the courts below ordering his ejectment from certain premises which are in his occupation as the tenant of the plaintiffs.

It is common ground that the defendant was a tenant of the plaintiffs and the rent of the premises in his occupation was Rs. 110 p.m. It is not disputed that the defendant was in arrears of rent from April 1, 1958 to March 31, 1959 to the extent of Rs. 1,020. On April 11, 1959 the plaintiffs served a notice on the defendant bringing to his notice the fact of his being in arrears of rent for 12 months and requiring him to remit to them Rs. 1,020 within one month from the date of service of notice and stating that on his failure to do so, a suit for ejectment would be filed against him. In addition to this the notice called upon the defendant to vacate the premises by April 30, 1959 upon two grounds:

(1) that the premises were required by the plaintiffs "genuinely for business"; and

(2) that the defendant had sublet a portion of the premises to two persons without the permission of the plaintiffs and without having any right to sublet the premises.

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This notice was received by the defendant on April 16, 1959. On June 25, 1959 the defendant sent a reply to the notice enclosing with it a cheque for Rs. 1,320. It may be mentioned that this amount consisted of the rental arrears as well as the rent due right up to June 30, 1959. The plaintiffs accepted the cheque and cashed it on July 4, 1959 and gave a fresh notice on July 9, 1959 requiring the defendant to vacate the premises by the end of the month of July. In their notice the plaintiffs also stated that they had cashed the cheque under protest. The defendant did not vacate the premises and, therefore, the present suit for eviction was instituted on August 14, 1959.

The plaintiffs claim for eviction on the grounds that the premises were required by them *bona fide* for the purpose of their business and that the defendant had illegally let them out was negatived by the courts below and, therefore, must be left out of question. The only question is whether the plaintiffs are entitled to eject the defendant upon the ground that the latter was in arrears of rent for one year and had failed to pay the arrears within one month of the service of the notice dated April 11, 1959 upon him. The tenancy being from month to month it was open to the plaintiffs to terminate it by giving 15 days' notice expiring at the end of the month of the tenancy as provided for in s. 106 of the Transfer of Property Act, 1882. The premises are, however, situated in Jabalpur in which the Madhya Pradesh Accommodation Control Act,1955 (No. 23 of 1955) (herein referred as the Accommodation Act) is in force. Section 4 of the Act provides that no suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the grounds set out in that section. One of the grounds set out in that section is that the tenant has failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a written notice of demand from the landlord. It is because of this provision that before the plaintiffs

could succeed it was necessary for them to establish that the defendant had failed to pay rental arrears within one month of the receipt by him of a notice of demand. From the undisputed facts it is clear that the defendant was in fact in arrears of rent and had failed to pay it within the time prescribed by cl. (a) of s. 4. According to the learned Additional Solicitor-General, however, in spite of these circumstances the plaintiffs' suit could not have been decreed because:

(1) the notice of April 11, 1959 was invalid for the purpose of s. 106 of the Transfer of Property Act inasmuch as the defendant did not have 15 clear days notice expiring by the end of the month of tenancy;

(2) that the notice as well as the default were both waived by the plaintiffs by reason of—

(*a*) acceptance of the cheque for Rs. 1,320, which included rent up to June 30, 1959;

(*b*) giving a fresh notice on July 9, 1959 and

(*c*) filing of a suit on August 14, 1959 in which reliance was placed only on the second notice.

(3) that the second notice was not valid with reference to the Transfer of Property Act and the Accommodation Act; and

(4) that there was no cause of action for the suit on August 14, 1959 under s. 5 of the Accommodation Act because no rent was in arrears on that date.

We shall deal with the points in the order in which he has mentioned them.

The learned Additional Solicitor-General contends—and rightly—that the provisions of s. 4 of the Accommodation Act are in addition to those of the Transfer of Property Act and that before a tenant

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can be evicted by a landlord he must comply both with the provisions of s. 106 of the Transfer of Property Act and those of s. 4 of the Accommodation Act. The Accommodation Act does not in any way abrogate Ch. V of the Transfer of Property Act which deals with leases of immovable property. The requirement of s. 106 of the Transfer of Property Act is that a lease from month to month can be terminated only after giving fifteen days' notice expiring with the end of a month of the tenancy either by the landlord to the tenant or by the tenant to the landlord. Such a notice is essential for bringing to an end the relationship of landlord and tenant. Unless the relationship is validly terminated the landlord does not get the right to obtain possession of the premises by evicting the tenant. Section 106 of the Transfer of Property Act does not provide for the satisfaction of any additional requirements. But then, s. 4 of the Accommodation Act steps in and provides that unless one of the several grounds set out therein is established or exists, the landlord cannot evict the tenant. Here the contention is that the ground set out by cl. (a) of that section does exist because the defendant was in arrears of rent for a period of one year and despite service upon him of a notice to pay the amount within one month of receipt thereof, he has failed to pay it. Now, the learned Additional Solicitor-General states that the notice of April, 1959 may be a good notice for the purposes of s. 4(a) of the Accommodation Act but it is not a good notice for the purposes of s. 106 of the Transfer of Property Act for two reasons: in the first place it does not purport to determine the tenancy and in the second place the notice falls short of the period of 15 days specified in s. 106 of the Transfer of Property Act. The High Court has, however, treated this as a composite notice under s. 4(a) of the Accommodation Act and s. 106 of the Transfer of Property Act and in our opinion rightly. It has to be observed that the plaintiffs, after requiring the defendant to pay the rental arrears due up to the end of March, 1959 within one month from the date of service of the notice, proceeded to say "failing which

suit for ejectment will be filed". These recitals clearly indicate the intention of the landlord to terminate the tenancy of the defendant under the relevant provisions of both the Acts. Even so, the question would arise whether the notice was ineffective under s. 106 of the Transfer of Property Act because it was not a notice of 15 clear days. It was held by the Calcutta High Court in *Subadini* v. *Durga Charan Lal*[1] that the notice contemplated by s. 106 must be notice of 15 clear days. In calculating the 15 days' notice the day on which the notice is served is excluded and even if the day on which it expires is taken into account it will be clear that the defendant had only 14 clear days' notice. Therefore, if the view taken in the aforesaid case is correct the period of notice falls short of that provided in s. 106 of the Transfer of Property Act by one day. The correctness of the aforesaid decision was not questioned by the same High Court in *Gobinda Chandra Saha* v. *Dwarka Nath Patita*[2]. No decision was brought to our notice in which a contrary view has been expressed. But Mr. Setalvad who appears for the plaintiffs, contends that a notice to quit should be liberally construed. In this connection he referred us to a decision in *Harihar Banerji* v. *Ramsashi Roy*[3]. In that case the Judicial Committee of the Privy Council has observed at p. 225:

> ".....that notices to quite, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances; and, further, that they are to be construed, not with a desire to find faults in them which would render them defective, but to be construed *ut res magis valeat quam pereat*."

(1) I.L.R. 28 Cal. 118. (2) A.I.R. 1915 Cal. 313.
(3) 45 I.A. 222.

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The decision really is of no assistance in this case because there the defect which was not said to invalidate the notice appertained to the description of the demised premises and the Privy Council held that the recipient of the notice would be quite conversant with the actual description and could know what the description stood for. Here the question is entirely different and that is whether the landlord had given the minimum period contemplated by s. 106 of the Transfer of Property Act to the tenant within which to vacate the premises. This provision is evidently intended to confer a facility on the tenant and must, therefore, be so construed as to enable him to have the fullest benefit of that facility. It seems to us that a liberal construction of a notice which would deprive the tenant of the facility of having the benefit of the minimum period of 15 days within which to vacate is not permissible. We, therefore, approve of the view taken in *Subadini's case*(1) and hold that the notice dated April 11, 1959 was ineffective as it does not fulfil the requirements of s. 106 of the Transfer of Property Act.

Mr. Setalvad for the plaintiffs, however, points out that a notice complying with the requirements of s. 106 was actually given by the plaintiffs to the defendant on July 9, 1959 and no fault could be found with it since it in fact gave more than 15 days' clear notice to the defendant to vacate the premises. He further points out that the suit was actually based upon this notice and, therefore, was competently instituted. We think the contention to be correct.

This brings us to the second and the fourth points raised by the learned Additional Solicitor-General which we will deal with together. His contention is that there were actually no arrears on the date of suit and that unless a tenant is in arrears on the date of suit he is not liable to be evicted because of the provisions of s. 4(a) of the Accommodation Act. The opening words of s. 4, cl. (a) are as follows:

(1) I.L.R. 28 Cal. 118.

"No suit shall be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds:—

(a) that the tenant has failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a written notice of demand from the landlord;"

This provision clearly speaks of a tenant having failed to make payment to the landlord of the arrears of rent due from him within the time prescribed in that clause. It does not mean that the ground on which eviction is claimed must subsist till the date of suit. It is well to bear in mind that this provision is quite different from the analogous provisions of the Bombay Rent, Hotel and Lodging House Rates (Control) Act, 1947, or the West Bengal Premises Tenancy Act, 1956. The protection to tenants given by these Acts is more extensive and a tenant in arrears of rent is given time to pay the arrears even after the institution of the suit. Indeed, in order to bring the Madhya Pradesh law in line with these Acts the Accommodation Act has been substituted by the M.P. Accommodation Control Act, 1961 (Act 41 of 1961). Clause (a) of s. 12 of that Act entitles a landlord to bring a suit for the eviction of the tenant where the latter has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner. Sub-section (3) of that section provides that no order for the eviction of a tenant could be made on the grounds specified in cl. (a) of sub-s. (1) if the tenant makes payment of deposit as required by s. 13. Sub-section (1) of s. 25 gives a right to the tenant to make an application within certain time for depositing the rental arrears in court. The scheme of the new Act is thus a substantial departure in this respect from that of s. 4 of the 1955 Act. The learned Additional Solicitor-General, however,

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says that if we look to some of the other grounds specified in s. 4 and to the provisions of ss. 16 and 17 of the new Act it would appear that when a suit is instituted at the instance of the landlord for the eviction of the tenant the latter must be in arrears on the date of the institution of the suit. In this connection he refers us to the provisions of cls. (g), (h), (j) and (k) of s. 4 and contends that the grounds referred to in those clauses must necessarily continue to exist till the date of the institution of the suit and that cl. (a) should be read as containing a similar condition. Clauses (g) and (h) deal with cases where the landlord, broadly speaking, requires the accommodation for his own residence or for his own business. Clause (j) deals with a case where a tenant had given written notice to quit and in consequence of that notice the landlord has contracted to sell or let the accommodation or has taken any other step as a result of which his interests would seriously suffer if he is not put in possession of that accommodation. Clause (k) deals with accommodation which was let to the tenant for use as a residence by reason of his being in the service of the landlord and the tenant has ceased, whether before or after the commencement of the Act, to be in such service. It is not necessary for us to decide in this case whether the grounds referred to in these clauses must necessarily continue to exist on the date of suit. It is sufficient to say that the language of cl. (a) must be given its natural meaning and that there is no warrant for modifying that language because while dealing with other grounds set out in other clauses, the legislature has used different language. If we were to uphold the contention of the learned Additional Solicitor-General we would be virtually re-writing the section by saying "that the tenant was in arrears of rent at the date of suit" in place of that the "tenant has failed to make payment etc." It is certainly not open to a court to usurp the functions of a legislature. Nor again, is there scope for placing an unnatural interpretation on the language used by the legislature and impute to it an intention which cannot be inferred from the language used by

it by basing ourselves on ideas derived from other laws intended to give protection to the tenants from eviction by landlords. As far as ss. 16 and 17 are concerned, they are of no assistance to the defendant. It is not necessary for us to reproduce their provisions; but it is sufficient to say that they were intended to give a limited retrospective operation to the provisions of the new s. 4. We have no doubt, therefore, that the ground set out in cl. (a) of s. 4 need not be shown by the landlord to exist at the date of institution of the suit. All that is necessary for him to establish is that the tenant was in fact in arrears, that he was given one month's notice to pay up the arrears and that in spite of this he failed to pay those arrears within one month of service of notice on him.

It is said that such an interpretation will lead to this result that the landlord who had served notice upon a tenant under cl. (a) of s. 4 and in compliance with which the tenant had failed to pay the arrears within one month of the service of notice, may continue the tenancy of the defaulting tenant, go on receiving rent from him and then at his sweet will may terminate the tenancy. The intention to give such a right to the landlord cannot reasonably, according to the learned Additional Solicitor-General, be attributed to the legislature. Theoretically that is possible; but the argument based upon it is far-fetched. The landlord who wants to evict a tenant and, therefore, avails himself of the ground furnished by cl. (a) of s. 4 would not wait for years to file a suit against his defaulting tenant. It seems to us that in furnishing the ground to the landlord the legislature intended to give only a limited protection to the tenant or to put it slightly differently, the legislature intended to give protection only to a tenant who was diligent and regular enough in the matter of payment of rent. That is all. Indeed, while it is open to a legislature to give wide protection to ever defaulting tenants, it does not follow from it that whenever it gives protection it must be deemed to have given him the protection of the widest amplitude.

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Then it is said that such an interpretation will deprive a tenant, for whose benefit s. 4 was enacted, of the benefit of s. 114 of the Transfer of Property Act which provides for relief against forfeiture for non-payment of rent. What is forfeiture is set out in s. 111 (g) of the Transfer of Property Act, which runs thus:

> "By forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;"

The effect of cl. (a) of s. 4 is merely to remove the bar created by the opening words of s. 4 on the right which a landlord has under s. 106 of the Transfer of Property Act to terminate a tenancy of a tenant from month to month by giving a notice terminating his tenancy. It does not convert a periodic tenancy into one of fixed or indefinite duration nor insert therein a clause of re-entry on the ground of non-payment of rent. The character of the tenancy as one from month to month remains; but to it is added a condition that the unfettered right to terminate the tenancy conferred by s. 106 will be exercisable only if one of the grounds set out in s. 4 of the Accommodation Act is shown to exist.

The next question is whether, as contended by the learned Additional Solicitor-General, the default made by the defendant in failing to pay the arrears within one month of the receipt of the notice dated April 11, 1959, can be said to have been waived by the plaintiffs. It is no doubt true that by cashing the cheque for Rs. 1,320 on July 4, 1959 the plaintiffs received not merely the arrears of rent up to March, 1959 but also rent upto June 30, 1959. There is no

substance in the plea made on their behalf that they had received the amount under protest. In the first place this is not a case to which illustration (a) to s. 113 of the Transfer of Property Act which says that acceptance of rent falling due after the expiry of a notice to quit amounts to waiver of the notice applies. Then again when the plaintiffs cashed the cheque they had not filed a suit on the basis of the notice of April 11, 1959. Merely saying that they accepted the money under protest is, therefore, of no avail to them. Even so, it is difficult to infer, merely from the acceptance of the payment, a waiver of the right which had accrued to them under s. 4(a) of the Act in consequence of the default made by the defendant in paying arrears of rent. The reason is quite simple. The tenancy, as was indeed argued by the learned Additional Solicitor-General, had not been validly terminated by the notice of April 11, 1959 and therefore the relationship of landlord and tenant continued. Consequently the plaintiffs were within their right in accepting the rent and cannot be fastened with the intention to waive the default just because of this action since the defendant was, by virtue of the Accommodation Act entitled to remain in possession as tenant and liable to pay rent. The learned Additional Solicitor-General, however, faintly contended that if the notice of April 11, 1959 could also be construed as being intended to be notice under s. 106 of the Transfer of Property Act then even though it was ineffective the acceptance of rent by the plaintiffs on July 4, 1959 amounted to a waiver of the right accruing from the notice. As we have already indicated, so far as the suit is concerned, it is based upon the notice of July 9, 1959, that is to say, the eviction of the defendant is claimed on the basis of a notice requiring him to quit by the end of July, 1959. The right accruing to the plaintiffs to institute the suit on the basis of this notice has not been waived at all and the receipt by them of rent prior to this date does not by itself terminate the right accruing to them under the notice dated July 9, 1959. It may be that if the notice of April 11, 1959 is construed

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as a composite notice, that is, one contemplated by cl. (a) of s. 4 as also one under s. 106 of the Transfer of Property Act, acceptance of the rent could, along with other circumstances, have led to the inference of waiver of the right flowing from the notice under s. 106 of the Transfer of Property Act. But it is difficult to see how such a construction of the notice can at all support a plea of waiver of the right accruing from cl. (a) of s. 4. As already pointed out, the notice of April 11, 1959 in so far as it purported to be under s. 106 of the Transfer of Property Act was ineffective and, therefore, the relationship of landlord and tenant continued between the plaintiffs and the defendant. Accepting rent under such circumstances from the defendant cannot justify the inference of waiver of quite a different right and that is to take advantage of the statutory right under s. 4 of the Accommodation Act accruing by reason of the default made in the payment of rental arrears. Indeed, the notice of April 11, 1959 as it stands, could not by itself have furnished the plaintiffs with the right to institute a suit. Till they acquired that right, not only were they entitled to accept the rent which accrued due from month to month but the defendant was himself liable to pay the rent whenever it fell due till the relationship of landlord and tenant was put an end to. Therefore, from the sole circumstance of acceptance of rent after April 11, 1959 waiver cannot at all be inferred. We are, therefore, unable to accept the argument of the learned Additional Solicitor-General that by cashing the cheque for Rs. 1,320 the plaintiffs waived all rights which accrued to them under the notice dated April 11, 1959. As we have already said, no right under s. 106 of the Transfer of Property Act had accrued to them because of the ineffectiveness of the notice in so far as the termination of tenancy was concerned and, therefore, no question of waiver with respect to that part of the notice arises. So far as the right accruing under s. 4 (a) of the Accommodation Act is concerned, the defendant having been under liability to pay rent even after the giving of notice the acceptance of the

rent by the plaintiffs would not by itself operate as waiver.

As regards the last point, we have in fact dealt with it already. What was contended was that the notice of April 11, 1959 was not a valid notice with reference to both the laws, that is, the Transfer of Property Act and the Accommodation Act. We have pointed out that though the notice could be construed to be composite notice it was ineffective in so far as it purports to be under s. 106 of the Transfer of Property Act. It was not suggested that in so far as it was a notice under the Accommodation Act it was invalid. There is, therefore, nothing more to be said about it.

For the foregoing reasons we uphold the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.

THE STATE OF ORISSA
v.
DABAKI DEVI AND OTHERS
(And connected appeals)

(A.K. SARKAR, K.C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR JJ.)

Sales Tax—Revision against order of assessment—Time limit—Orissa Sales Tax Act, 1947 (*Orissa* 14 *of* 1947), *ss.* 12, 23.

The respondents were assessed to sales tax under the provisions of the Orissa Sales Tax Act, 1947, by the Sales Tax Officer, who rejected their claim to certain deductions from their taxable turnover, but, on appeal, the Assistant Collector allowed the claim. The Collector of Sales Tax, however, acting under s. 23(3) of the Act revised the orders of the Assistant Collector by raising the taxable turnover allowed by him to be deducted. The respondents moved the High Court of Orissa under Art. 226 of the Constitution of India to quash the orders of the Collector on the ground that they were illegal under the Act as they had been made more than thirty six months after the expiry of the quarters in respect of which the assessments had originally been made. The High Court took the view that the orders in revision were really reassessments under sub-s. (7) of s. 12 of the Act of turnover which had escaped assessment or been under assessed and as such they were barred by limitation.