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That, to our mind, indicates that the bargain had been freely made. There was nothing else to which our attention was directed as showing that the bargain was hard. We, therefore, think that the bargain was a reasonable one and the eighty-five years' term of the mortgage should be enforced. We then come to the conclusion that the suit was premature and must fail.

In the result we dismiss this appeal with costs.

Appeal dismissed.

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April 15.

SALES TAX OFFICER, CUTTACK AND ANOTHER

v.

M/s. B. C. PATEL & CO.

(S. R. DAS C. J., VENKATARAMA AIYAR, S. K. DAS, A. K. SARKAR and VIVIAN BOSE JJ.)

Sales Tax—Notification enforcing the charge not wholly in consonance with the charging provision—Validity—Assessment for periods both before and after the Constitution—Legality—Orissa Sales Tax Act, 1947 (Orissa XIV of 1947), s. 4—Constitution of India, Art. 186.

This appeal by the Sales Tax authorities was directed against the judgment and order of the Orissa High Court, passed under Art. 226 of the Constitution, quashing five orders of assessment covering five quarters made against the respondents who carried on the business of collection and sale of Kendu leaves in the erstwhile Feudatory State of Pallahara to which, on its merger into the province of Orissa on January 1, 1948, the provisions of the Orissa Sales Tax Act, 1947, were extended on March 1, 1949. On the same date the Government of Orissa issued a notification under s. 4(1) of the Act which was in the following terms:

"In exercise of the powers conferred by sub-section (1) of Section 4 of the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947), as applied to Orissa State, the Government of Orissa are pleased to appoint the 31st March, 1949, as the date with effect from which every dealer whose gross turnover during the year ending the 31st March, 1949, exceeded Rs. 5,000 shall be liable to pay

under the said Act on sales effected after the said date". Section 4 of the Act, inter alia, provided: "(1) . . . . with effect from such date as the Provincial Government may by notification in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified. . . . (2) Every dealer to whom sub-section (1) does not apply shall be liable to pay under this Act with effect from the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000".

The goods were admittedly delivered for consumption at various places outside the State and the Sales Tax Officer as well as the Assistant Collector in appeal, proceeding on the basis that the sales took place in the State, held that the respondents were liable to Sales Tax for all the five quarters, two of which fell before the commencement of the Constitution and three thereafter. The contention of the respondents before the High Court was that the notification under s. 4(1) of the Act was invalid as it ran counter to the provisions of that sub-section and no part of that charging section could, therefore, come into force. It was further contended that the assessment for the three quarters following the commencement of the Constitution was invalid by reason of Art. 286 of the Constitution. The High Court found entirely in favour of the assessee:

Held (*per* Das C. J., Venkatarama Aiyar, S. K. Das and Vivian Bose, JJ.), that the decision of the High Court in so far as it related to the three post-Constitution quarters was correct and must be upheld. The orders of assessment for those quarters contravened both Art. 286 of the Constitution and s. 30(1)(a)(i) of the Orissa Sales Tax Act and were without jurisdiction and must be set aside. So far as the two pre-Constitution quarters were concerned, the assessees were clearly liable under s. 4(2) of the Act.

Per Das C. J. and Venkatarama Aiyar J. The first part of the impugned notification, appointing the date from which the liability was to commence, was in consonance with s. 4(1) of the Act and, therefore, clearly intra vires, whereas the second part, indicating the class of dealers on whom the liability was to fall, went beyond that section and must, therefore, be held to be ultra vires and invalid. But since the two parts were severable, the invalidity of the second part could in no way affect the validity of the first part which brought the charging section into operation and the assessees were liable for the two pre-Constitution quarters under s. 4(1) as well.

Per S. K. Das and Vivian Bose JJ.—It would not be correct to say that the second part of the notification was a mere surplusage severable from the rest of the notification. Liability to pay the

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tax under s. 4(1) of the Act could arise only on the issue of a valid notification in conformity with the provisions of that sub-section and as there was no such notification the assessees were not liable under s. 4(1) of the Act which did not come into operation. Sub-sections (1) and (2) of s. 4 are mutually exclusive, and their periods of application being different both could not apply at the same time and no notification was necessary to bring into operation sub-s. (2) of the Act.

The goods having been admittedly sold and delivered for consumption outside the State of Orissa, under Art. 286 (1)(a) read with the Explanation as also under s. 30(1)(a)(i) of the Act, the sales were outside the State of Orissa and, consequently, the assessment for the three post-Constitution quarters were without jurisdiction.

The State of Bombay v. *The United Motors (India) Ltd.*, [1953] S.C.R. 1069 and *The Bengal Immunity Company Limited* v. *The State of Bihar*, [1955] 2 S.C.R. 603, relied on.

Per Sarkar J.—There could be no liability under s. 4(1) of the Act till a date was appointed thereunder, and where the notification, as in the instant case, fixing such a date, was not in terms of that sub-clause, there was no fixing of a date at all and the sub-clause could not come into play and no liability could arise under it. It was impossible to ignore the second part of the notification in question as a mere surplusage since the notification read as a whole had one meaning and another without it. The Government could not be heard to say that what it had said in the notification was not what it actually meant.

Both the sub-clauses of s. 4 having been brought into force at the same time by the same notification, they applied to all dealers together and contemplated a situation in which the liability of a dealer under sub-cl. (1) might arise. It was apparent from the scheme of the Act that sub-cl. (2) was not intended to have any operation till a date was appointed under sub-cl. (1) and a liability under it might have arisen.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 230 of 1956.

Appeal by special leave from the judgment and order dated April 12, 1955, of the Orissa High Court in O. J. C. No. 60 of 1952.

C. K. Daphtary, Solicitor-General of India, R. Ganapathi Iyer and *R. H. Dhebar*, for the appellants.

S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the respondent.

1958. April 15. The Judgment of Das C. J. and

Venkatarama Aiyar J. was delivered by Das C. J. The Judgment of S. K. Das and Vivian Bose JJ. was delivered by S. K. Das J. Sarkar J. delivered a separate judgment.

DAS C. J.—We agree that this appeal must be allowed in part but we prefer to rest our judgment on one of the material points on a ground which is different from that adopted by our learned Brother S. K. Das J. in the judgment which has just been delivered by him and which we have had the advantage of perusing.

The Orissa Sales Tax Act, 1947 (Orissa XIV of 1947), hereinafter referred to as the said Act received the assent of the Governor-General on April 26, 1947, when s. 1 of the Act came into force. On August 1, 1947, a Notification was issued by the Government of Orissa bringing the rest of the said Act into force in the Province of Orissa, as it was then constituted. Section 4, as it stood at all times material to this appeal, ran as follows:

"4(1) Subject to the provisions of sections 5, 6, 7 and 8 and with effect from such date as the Provincial Government may, by notification in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified:

Provided that the tax shall not be payable on sale involved in the execution of a contract which is shown to the satisfaction of the Collector to have been entered into by the dealer concerned on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of

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which his gross turnover has failed to exceed Rs. 5,000 and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover again exceeds Rs. 5,000."

On August 14, 1947, a notification was issued by the Government of Orissa appointing September 30, 1947, as the date with effect from which that sub-section was to come into force in the then province of Orissa.

On January 1, 1948, by a covenant of merger executed by its ruler, the feudatory State of Pallahara merged into the province of Orissa. In exercise of the powers delegated to it by the Government of India under what was then known as the Extra Provincial Jurisdiction Act, 1947, the Government of Orissa on December 14, 1948, issued a notification under s. 4 of that Extra Provincial Jurisdiction Act, extending the Orissa Sales Tax Act to the territories of the erstwhile feudatory States, including Pallahara which had merged into the province of Orissa. On March 1, 1949, a notification under s. 1(3) was issued by the Government of Orissa bringing ss. 2 to 29 of the said Act into force in the added territories. On the same day another notification was issued under s. 4(1) of the Act, which was in the following terms:

"In exercise of the powers conferred by Sub-section (1) of Section 4 of the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947) as applied to Orissa State, the Government of Orissa are pleased to appoint the 31st March, 1949, as the date with effect from which every dealer whose gross turnover during the year ending the 31st March, 1949, exceeded Rs. 5,000 shall be liable to pay tax under the said Act on sales effected after the said date."

It was after this notification had been issued that the respondents were sought to be made liable to tax.

The respondents were assessed under the said Act

for five quarters ending respectively on September 30, 1949, December 31, 1949, June 30, 1950, September 30, 1950, and December 31, 1950. It will be noticed that the first two quarters related to a period prior to the commencement of the Constitution and the remaining three quarters fell after the Constitution came into force. The Sales Tax Officer, Cuttack having assessed the respondents to Sales Tax under the said Act for each and all of the said five quarters and the respondent's several appeals against the said several assessment orders under the said Act having been dismissed on April 12, 1952, the respondents filed a petition under Art. 226 of the Constitution in the Orissa High Court praying, inter alia, for a writ in the nature of a writ of certiorari for quashing the said assessment orders and for prohibiting the appellants from realising the tax so assessed or from making assessments on them in future. The contention of the respondents before the High Court was that the notification issued by the Government of Orissa on March 1, 1949, under s. 4(1) being invalid in that it ran counter to the provisions of that sub-section, no part of the charging section came into force and consequently they were not liable to tax at all for any of the five quarters. As regards the three quarters following the commencement of the Constitution, they urged an additional plea, namely, that the assessment orders for those three quarters were invalid by reason of the provisions of Art. 286 of the Constitution. The High Court accepted both these contentions and by its judgment and order pronounced on April 12, 1955, cancelled the assessments. The Sales Tax Officer, Cuttack, and the Collector of Commercial Taxes, Cuttack, have appealed against the judgment and order of the High Court.

As regards the assessment orders for the three post-Constitution quarters, the decision of the High Court purports to have proceeded on the decision of this Court in the *State of Bombay* v. *United Motors (India) Ltd.* (1). We find ourselves in complete agreement with

(1) [1953] S.C.R. 1069.

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our learned Brother S. K. Das J. for reasons stated by him that the assessment orders for the three post-Constitution quarters were hit by cl. (1) of Art. 286 and also s. 30 (1) (a) (i) of the Act and were rightly held by the High Court to be without jurisdiction. It is with regard to the assessment orders for the two pre-Constitution quarters that we have come to a conclusion different from that to which our learned Brother has arrived. We proceed to state our reasons.

The impugned notification, as hereinbefore stated, was issued on March 1, 1949, under s. 4 (1) of the said Act. Under that sub-section every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded Rs. 5,000 would be liable to pay the tax under the Act on sales effected after the date "so notified", that is to say, the date which the provincial Government might by notification in the Gazette appoint. It is clear, therefore, that s. 4 (1) by its own terms determined the persons on whom the tax liability would fall but left it to the provincial Government only to appoint the date with effect from which the tax liability would commence. It follows, therefore, that the only power conferred by s. 4 (1) on the Government was to appoint, by a notification in the Official Gazette, a date with effect from which the tax liability would attach to the dealers described and specified in the sub-section itself as the persons on whom that liability would fall. The Government of Orissa issued the notification, hereinbefore quoted, "in exercise of the powers conferred by sub-section (1) of section 4" and appointed March 31, 1949, as the date with effect from which the tax liability would commence. It was none of the business of the Government of Orissa to say on what class of dealers the tax liability would fall, for that had been already determined by the sub-section itself. Therefore, by the notification the Government of Orissa properly exercised its powers under sub-s. (1) in so far as it appointed March 31, 1949, as the date, but it exceeded its powers by proceeding to say that all dealers whose gross turnover during the year ending

March 31, 1949, exceeded Rs. 5,000 should be liable to pay tax under the Act. This part of the notification clearly ran counter to the sub-section itself, for under that sub-section it is only those dealers whose gross turnover exceeded Rs. 5,000 "during the year immediately preceding the commencement of this Act" that became liable to pay the tax. For the purposes of the five assessment orders it made no difference whether the Act is taken to have commenced on December 14, 1948, when it was extended to the feudatory States by notification under s. 4 of the Extra Provincial Jurisdiction Act, 1947, or on March 1, 1949, when the notification under s. 1 (3) was issued, for in either case the year immediately preceding the commencement of this Act was April 1, 1947, to March 31, 1948. The position, therefore, is that by the earlier part of the impugned notification the Government of Orissa properly and rightly exercised its power in appointing March 31, 1949, as the date with effect from which the liability to pay tax under the Act would commence, but by its latter part did something more which it had no business to do, i. e., to indicate, contrary to the sub-section itself, that those dealers whose gross turnover during the year ending on March 31, 1949, would be liable to pay tax under the Act. The notification in so far as it purports to determine the class of dealers on whom the tax liability would fall, was certainly invalid. The question that immediately arises is as to whether the whole notification should be adjudged invalid as has been done by the High Court and as is proposed to be done by my learned Brother S. K. Das J. or the two portions of the notification should be severed and effect should be given to the earlier part which is in conformity with s. 4(1) and the latter part which goes beyond the powers conferred by the sub-section to the Government of Orissa should be rejected. Immediately the question of severability arises. Are the two portions severable? We find no difficulty in holding that the portion of the notification which went beyond the powers conferred on the Government of Orissa is quite clearly and easily severable from that

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which was within its powers. It cannot possibly be said that had the Government of Orissa known that it had no power to determine the persons on whom the tax liability would fall it would not have appointed a date at all. In our view there is no question of the two parts being inextricably wound up. We, therefore, hold that the notification, in so far as it appointed March 31, 1949, as the date with effect from which liability to pay tax would commence was valid and the rest of the notification was invalid and must be treated as surplus without any legal efficacy. The result, therefore, is that the charging section was effectively brought into force and the entire charging section became operative and dealers could be properly brought to charge under the appropriate part of the charging section.

It is true that the notification having also stated that the dealers, whose gross turnover exceeded Rs. 5,000 during the year ending March 31, 1949, would be liable to pay the tax, the sales tax authorities naturally applied their mind to the question whether during the year ending March 31, 1949, the gross turnover of the respondents exceeded the requisite amount, but did not inquire into the question whether the respondent's gross turnover exceeded Rs. 5,000 during the year immediately preceding the commencement of the Act which in this case was the financial year from April 1, 1947 to March 31, 1948. If the matter stood there, it would have been necessary to send the case back to the Sales Tax Officer to enquire into and ascertain whether the quantum of the gross turnover of the respondents during the last mentioned financial year ending on March 31, 1948, exceeded Rs. 5,000 or it did not. But a remand is not called for because it appears from the judgment under appeal that it was conceded that for the period April 1, 1949, till the commencement of the Constitution on January 26, 1950, the respondents would have been liable to pay sales tax provided a valid notification had been issued, under sub-s. (1) of s. 4. This concession clearly amounts to an admission that the gross turnover of the respondents during the financial

year ending on March 31, 1948, which was the year immediately preceding March 31, 1949, exceeded Rs. 5,000. We have already held that the notification issued under s. 4(1) in so far as it appointed March 31, 1949, as the date with effect from which the liability to pay sales tax would commence was good and valid in law. That finding coupled with the concession mentioned above relieves us from the necessity of remanding the case to the sales tax authorities. Even if we assume, contrary to the aforesaid concession, that the gross turnover of the respondents during the financial year ending on March 31, 1948, did not exceed Rs. 5,000 and, therefore, s. 4 (1) did not apply to them the respondents will still be liable to pay the sales tax for the two pre-Constitution quarters under s. 4 (2).

For reasons stated above we hold that the assessment orders for the three post-Constitution quarters were invalid and we accordingly agree that this appeal, in so far as it is against that part of the order of the High Court which cancelled the assessment orders for those three post-Constitution quarters, should be dismissed. We further hold that the assessments for the two pre-Constitution quarters were valid for reasons stated above and accordingly we agree in allowing this appeal in so far as it is against that part of the order of the High Court which cancelled the assessment orders for the two pre-Constitution quarters on the ground that the notification issued under s. 4 (1) of the Act was wholly invalid. Under the circumstances of this case we also agree that the parties should bear their own costs in the High Court as well as in this Court.

S. K. Das J.

S. K. DAS J.—This appeal on behalf of the assessing authorities, Cuttack, has been brought pursuant to an order made on January 17, 1956, granting them special leave to appeal to this Court from the judgment and order of the High Court of Orissa dated April 12, 1955, by which the High Court quashed certain orders of assessment of sales tax made against the respondent.

The short facts are these. The respondent, Messrs. B. C. Patel and Co., is a partnership firm carrying on

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the business of collection and sale of Kendu leaves. The firm has its headquarters at Pallahara, which was formerly one of the Feudatory States of Orissa and merged in the then province of Orissa by a merger agreement dated January 1, 1948. The Sales Tax authorities, Cuttack, in the State of Orissa, assessed the respondent to sales tax in respect of sales of Kendu leaves which took place for five quarters ending on September 30, 1949, December 31, 1949, June 30, 1950, September 30, 1950 and December 31, 1950. It should be noted that two of the aforesaid quarters related to a period prior to the commencement of the Constitution, and the remaining three quarters were post-Constitution. The facts which the Sales Tax authorities found were (1) that the respondent collected Kendu leaves in Orissa and sold them to various merchants of Calcutta, Madras and other places on receipt of orders from them, (2) that the goods were sent either f. o. r. Talcher or f. o. r. Calcutta, and (3) the sale price was realised by sending the bills to the purchasers for payment. The admitted position was that the goods were delivered for consumption at various places outside the State of Orissa. The Sales Tax authorities proceeded on the footing that all the sales took place in Orissa even though the goods were delivered for consumption at places outside Orissa. By five separate assessment orders dated May 31, 1951, the Sales Tax Officer, Cuttack, held that the sales having taken place in Orissa, the respondent was clearly liable to sales tax for the pre-Constitution period and, for the post-Constitution period, though the sales came within cl. (2) of Art. 286 of the Constitution, the respondent was liable to sales tax under the Sales Tax Continuance Order, 1950, made by the President. These findings were affirmed by the Assistant Collector of Sales Tax, Orissa, on appeal, by his order dated April 12, 1952. The respondent assessee then filed a petition under Art. 226 of the Constitution in the High Court of Orissa and prayed for the issue of a writ of certiorari or other appropriate writ quashing the aforesaid orders of assessment. The case of the respondent before the High Court was that the assessment orders, both with

regard to the pre-Constitution and post-Constitution periods, were invalid and without jurisdiction. The High Court accepted the case of the respondent and held that the assessment orders for the entire period were invalid and without jurisdiction. The present appeal has been brought from the aforesaid judgment and order of the High Court of Orissa dated April 12, 1955.

Though before the Sales Tax authorities and in the High Court, an attempt was made on behalf of the respondent assessee to show that there were no completed sales in Orissa and what took place in Orissa was a mere agreement to sell, that question is no longer at large before us. The Sales Tax authorities found against the respondent on that question and the High Court did not consider it necessary to decide it on the petition filed by the respondent. The High Court proceeded on certain other grounds pressed before it by the respondent, and we proceed now to consider the validity of those grounds. The grounds are different in respect of the two periods, pre-Constitution, and post-Constitution, and it will be convenient to take these two periods separately.

But before we do so, it is necessary to state some facts with regard to the enactment and enforcement of the Orissa Sales Tax Act, 1947 (Orissa XIV of 1947), hereinafter referred to as the Act, in the old province of Orissa and the ex-Feudatory State of Pallahara. The Act received the assent of the Governor General on April 26, 1947, and was first published in the Orissa Gazette on May 14, 1947. Section 1 came into force at once in the old province of Orissa and sub-s. (3) of that section said that " the rest of the Act shall come into force on such date as the Provincial Government may, by notification in the Gazette, appoint ". The Provincial Government of Orissa notified August 1, 1947, as the date on which the rest of the Act was to come into force in the province of Orissa. It is necessary at this stage to refer to the charging section, namely s. 4 of the Act, which is set out below as it stood at the relevant time:

" 4. (1) Subject to the provisions of sections 5, 6, 7

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and 8 and with effect from such date as the Provincial Government may, by notification in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified.

.....

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover has failed to exceed Rs. 5,000 and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provision of sub-section (3) shall again be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover again exceeds Rs. 5,000."

It is to be noticed that for a liability to arise under sub-s. (1) of s. 4, a notification by the Provincial Government is necessary, and the notification must fix the date from which every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified. Such a notification was issued for the old province of Orissa on August 30, 1947, and September 30, 1947, was fixed as the date with effect from which every dealer whose gross turnover during the year ending March 31, 1947, exceeded Rs. 5,000 was made liable to pay tax under the Act on sales effected after the said date. This was the position in the old province of Orissa. We have already stated that the

ex-Feudatory State of Pallahara was merged into the old province of Orissa by a merger agreement dated January 1, 1948. After the merger of Pallahara in the old province of Orissa, the Government of Orissa under the delegated authority of the Central Government and exercising the powers under s. 4 of the Extra Provincial Jurisdiction Act, 1947 (XLVII of 1947) (as it was then called) applied the Act to the former Orissa States including Pallahara by a notification dated December 14, 1948. The only modification made in applying the Act to the Orissa States was to substitute the words "Orissa States" for the words "Province of Orissa", wherever they occurred in the Act. By merely applying the Act to the Orissa States on December 14, 1948, all sections of the Act did not come into force in that area at once, since a notification under sub-s. (3) of s. 1 was necessary to bring into force ss. 2 to 29. Such a notification was issued on March 1, 1949. The notification was in these terms:

"In exercise of the powers conferred by sub-section (3) of section 1 of the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947), as applied to Orissa States, the Government of Orissa are pleased to appoint the 1st day of March, 1949, as the date on which sections 2 to 29 of the said Act shall come into force".

The position therefore was this. Section 1 of the Act came into force in Pallahara on December 14, 1948, and the remaining sections came into force on March 1, 1949, namely, those sections which dealt with the liability of a dealer to pay sales tax, set up a machinery for collection of the tax and dealt with other ancillary matters. A notification under sub-s. (1) of s. 4 was also necessary for a liability to arise under that sub-section in the said area, and such a notification was issued on March 1, 1949. That notification must be quoted in full, as one of the points for our decision is the validity of the notification. The notification read:

"In exercise of the powers conferred by sub-section (1) of section 4 of the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947), as applied to Orissa States, the Government of Orissa are pleased to

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appoint the 31st March, 1949, as the date with effect from which every dealer whose gross turnover during the year ending the 31st March, 1949, exceeded Rs. 5,000 shall be liable to pay tax under the said Act on sales effected after the said date".

Two other provisions of the Act must be referred to here. The word "dealer" is defined in s. 2(c) in these terms:

"'dealer' means any person who carries on the business of selling or supplying goods in Orissa, whether for commission, remuneration or otherwise and includes any firm or a Hindu joint family, and any society, club or association which sells or supplies goods to its members;". The word "year" is defined in s. 2(j) and means the financial year.

Now, with regard to the pre-Constitution period the High Court has found that the notification under sub-s. (1) of s. 4 dated March 1, 1949, was an invalid notification and therefore the respondent was not liable to tax under that sub-section in respect of the transactions which took place in the pre-Constitution period. The reason why the High Court has held that the notification in question was invalid must now be stated. The scheme of sub-s. (1) of s. 4 is, firstly, to fix a date, not earlier than thirty days after the date of the notification, from which the liability is to commence; and, secondly, to impose a liability on every dealer whose gross turnover during the year immediately preceding the commencement of the Act exceeded Rs. 5,000. The tax liability is on transactions of sale which take place after the notified date (which must necessarily be after the commencement of the Act); but in determining on which class of dealers the incidence of taxation will fall, the crucial period as mentioned in the sub-section itself is the year immediately preceding the commencement of the Act. Therefore, the sub-section contemplates two matters, one of which may be called the 'relevant date' and the other 'relevant period'. So far as the old province of Orissa was concerned, there was no difficulty. The notification fixed September 30, 1947, as the relevant date, and the year immediately preceding

the commencement of the Act in the old province of Orissa was the relevant period, viz., the financial year 1946-47, i. e., April 1, 1946 to March 31, 1947. Therefore dealers whose gross turnover exceeded Rs. 5,000 in 1946-47, became liable under sub-s. (1) of s. 4 to tax on transactions of sale after September 30, 1947, in the old province of Orissa. The notification for the Orissa States, however, fixed March 31, 1949, as the relevant date; but in determining the class of dealers who would be subject to the liability, it took the year ending March 31, 1949, as the relevant period. This was clearly a mistake, because under sub-s. (1) of s. 4 the crucial year is the year immediately preceding the commencement of the Act. The Act commenced in the Orissa States either on December 14, 1948, or on March 1, 1949, and the financial year immediately preceding was the year 1947-48, i. e., April 1, 1947 to March 31, 1948. The notification would have been in consonance with the sub-section, if it had mentioned the year ending March 31, 1948, (instead of March 31, 1949) as the crucial year for determining the class of dealers who would be subject to the liability under sub-s. (1) of s. 4. This mistake in the notification is the ground on which the High Court held that the assessments for the two quarters of the pre-Constitution period were invalid and without jurisdiction.

The learned Solicitor-General who has appeared for the appellants has conceded that a mistake was made in the notification. However, he has argued—firstly, that the mistake was immaterial and secondly, that the assessment orders for the pre-Constitution period were justified under sub-s. (2) of s. 4. As to the first argument that the mistake was immaterial, he has submitted that the liability to tax arose under the sub-section and not under the notification, and any mistake in the notification did not affect such liability; he has also submitted that the words and figures which gave rise to the mistake were mere surplusage and could be severed from the rest of the notification. We are unable to accept this argument. For a liability to arise under sub-s. (1) of s. 4, the issue of a

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notification is an essential prerequisite, and unless the notification complies with the requirements of the sub-section, no liability to tax can arise under it. The notification not only fixed the relevant date, but fixed the relevant period for determining the class of dealers who would be subject to the liability. In doing so, it made a mistake, the result of which was that the notification was not in conformity with the law. We do not think that it can be severed in the way suggested by the learned Solicitor General.

Now, we come to the second argument—whether the pre-Constitution assessment orders are justified under sub-s. (2) of s. 4. The High Court held that they were not, and gave two reasons for its view: one was that sub-sections (1) and (2) were mutually exclusive and the other was based on the opening words of sub-s. (2), which says that "every dealer to whom sub-section (1) does not apply etc." The High Court expressed the view that if the notification under sub-s. (1) were correctly drawn up, the sub-section would have applied to the respondent; therefore, the opening words of sub-s. (2) barred the application of the sub-section to the respondent. At first sight, there appears to be some force in this view. But on a closer examination we do not think that the view expressed by the High Court is correct. Sub-sections (1) and (2) are mutually exclusive only in the sense that they do not operate in the same field; that is, the relevant periods for their application are different. The relevant period for the application of sub-s. (1) is "the year immediately preceding the commencement of the Act." Sub-section (2) however does not require any notification, and under it every dealer is liable to pay tax under the Act with effect from the commencement of the year immediately following that during which his gross turnover *first* exceeded Rs. 5,000. Obviously, the relevant period for the application of sub-s. (2) is the year immediately following that during which the gross turnover of a dealer *first* exceeded Rs. 5,000. The contrast between the two sub-sections is this: for sub-s. (1) the crucial year is *the year immediately preceding the commencement of*

the Act; but for sub-s. (2) the crucial year is the year in which the dealer's gross turnover *first* exceeded Rs. 5,000. We agree that *for the same relevant year* both sub-sections (1) and (2) cannot apply, because sub-s. (2) says—"Every dealer to whom sub-s. (1) does not apply etc." Let us, for example, take the year 1946-47 in the old province of Orissa. That was the year immediately preceding the commencement of the Act in that area, and sub-s. (1) applied to all dealers whose gross turnover exceeded Rs. 5,000, first or otherwise, in that year; sub-s. (2) did not apply to such dealers even if their gross turnover exceeded Rs. 5,000 for the *first time* in that year; because where sub-s. (1) applies, sub-s. (2) does not apply. But what is the case before us? The year immediately preceding the commencement of the Act in the Pallahara area was 1947-48, and sub-s. (1) would have applied to the respondent if the notification had mentioned that year. But it did not, and the result was that it was not necessary to find if the respondent's gross turnover exceeded Rs. 5,000 in 1947-48. What was found was that the respondent's gross turnover exceeded Rs. 5,000 in 1948-49, that is, the year ending March 31, 1949, which was not the year immediately preceding the commencement of the Act in the Pallahara area. Obviously, therefore, sub-s. (1) did not apply to the respondent; but he clearly came under sub-s. (2). The Act came into force in the Orissa States on March 1, 1949. By March 31, 1949, the respondent's gross turnover exceeded Rs. 5,000. He was, therefore, liable to pay tax under sub-s. (2) with effect from the commencement of the year immediately following March 31, 1949, that is, from April 1, 1949. It has been argued for the respondent that the word 'first' in sub-s. (2) means 'first' after the commencement of the Act. Assuming this to be correct, the respondent still comes under sub-s. (2); because even if the Act came into force on March 1, 1949, the respondent's gross turnover first exceeded Rs. 5,000 in the year ending March 31, 1949—which was after the commencement of the Act.

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We are, therefore, of the view that all the requirements of sub-s. (2) are fulfilled in this case, and the two assessment orders made against the respondent for the pre-Constitution period were validly made under sub-s. (2) of s. 4 of the Act. The effect of the invalid notification under sub-s. (1) was that there was no liability thereunder, and no dealers were liable to pay tax under that sub-section. But that did not mean that any dealer who properly came under sub-s. (2) was free to escape his liability to pay tax. Surely, the position cannot be worse than what it would have been if the Provincial Government had failed to issue a notification under sub-s. (1).

We now turn to the post-Constitution period. The short ground on which the High Court held the assessment orders for this period to be invalid was based on the decision of this Court in *The State of Bombay* v. *The United Motors (India) Ltd.* (1). Said the High Court:

"Clause (1) of Article 286 prohibited a State from taxing a sale unless such sale took place within the State as explained in the Explanation to the clause of the Article. Similarly, clause (2) of that Article restricted the power of a State to tax a sale which took place 'in the course of inter-State trade or commerce'. Doubtless, by virtue of the proviso to that clause an Order by the President may save taxation on such inter-State sales till the 31st March, 1951. The recent decision of the Supreme Court reported in A.I.R. (1953) S.C. p. 252 has settled the law regarding the true scope of these two clauses of the Article. Where a transaction of sale involves inter-State elements if the goods are delivered for consumption in a particular State that State alone can tax the sale by virtue of clause (1) of that Article and by a legal fiction that sale becomes 'intra-State sale'. Clause (2) of Article 286 applies to those transactions of sale involving inter-State elements which do not come within the scope of clause (1) of that Article. On the admitted facts of the present case, clause (1) of Article 286 would apply. The sales involve inter-State elements inasmuch as the buyers are outside Orissa, price is paid outside Orissa and

(1) [1953] S.C.R. 1069.

goods are delivered for consumption outside Orissa. Hence, by virtue of clause (1) of Article 286 as explained by their Lordships of the Supreme Court, the State of Orissa is not competent to tax such transactions of sale."

The learned Solicitor General has rightly pointed out that in a later decision of this Court in *The Bengal Immunity Company Limited* v. *The State of Bihar and Others* (1), which was not available to the High Court when it delivered its judgment, the view expressed in the *United Motors' case* (2) was departed from in so far as the earlier decision held that cl. (2) of Art. 286 of the Constitution did not affect the power of the State in which delivery of goods was made to tax inter-State sales or purchases of the kind mentioned in the Explanation to cl. (1) and the effect of the Explanation was that such transactions were saved from the ban imposed by Art. 286(2). The learned Solicitor-General, therefore, contends that on the basis of the later decision, the assessments made should be held to be valid under the Sales Tax Continuance Order, 1950, made by the President, even though the sales took place in course of inter-State trade or commerce.

It is necessary to state here that by the Adaptation of Laws (Third Amendment) Order, 1951, made by the President in exercise of the power given by cl. (2) of Art. 372 of the Constitution, s. 30 was inserted in the Act to bring it into accord with the Constitution, from January 26, 1950. Section 30 which in substance reproduced Art. 286 of the Constitution, as it then stood, was in these terms—

"30. (1) Notwithstanding anything contained in this Act—

(a) a tax on sale or purchase of goods shall not be imposed under this Act

(i) where such sale or purchase takes place outside the State of Orissa; or

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India;

(b) a tax on the sale or purchase of any goods

(1) [1955] 2 S.C.R. 603. (2) [1953] S.C.R. 1069.

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shall not, after the 31st day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The explanation to clause (1) of Article 286 of the Constitution shall apply for the interpretation of sub-clause (i) of clause (a) of sub-section (1)."

We are of the view that the *Bengal Immunity decision* (1) does not really help the learned Solicitor-General to establish his contention that the assessments for the post-Constitution period were valid. The admitted position was that the goods sold were delivered for consumption at various places outside the State of Orissa. Therefore, under cl. (1) (a) of Art. 286 read with the Explanation as also under s. 30 of the Act, the sales were outside Orissa. It is true that the *Bengal Immunity decision* (1) took a view different from that of the earlier decision in so far as it held that inter-State sales were converted into intra-State sales by the Explanation; but it was pointed out that the States' power with respect to a sale or purchase might be hit by one or more of the bans imposed by Art. 286. With reference to the different clauses of Art. 286, it was observed in the majority judgment of the *Bengal Immunity decision* (1):

"These several bans may overlap in some cases but in their respective scope and operation they are separate and independent. They deal with different phases of a sale or purchase but, nevertheless, they are distinct and one has nothing to do with and is not dependent on the other or others. The States' legislative power with respect to a sale or purchase may be hit by one or more of these bans. Thus, take the case of a sale of goods declared by Parliament as essential by a seller in West Bengal to a purchaser in Bihar in which goods are actually delivered as a direct result of such sale for consumption in the State of Bihar. A law made by West Bengal without the assent of the President taxing this sale will be unconstitutional because (1) it will offend Article 286 (1) (a) as the sale has taken place outside the territory by virtue of the

(1) [1955] 2 S.C.R. 603.

Explanation to clause (1) (a), (2) it will also offend Article 286 (2) as the sale has taken place in the course of inter-State trade or commerce and (3) such law will also be contrary to Article 286 (3) as the goods are essential commodities and the President's assent to the law was not obtained as required by clause (3) of Article 286. This appears to us to be the general scheme of that article." (see pp. 638-639 of the report).

At p. 647 of the report, it was further observed—

"The operative provisions of the several parts of Article 286, namely, clause (1) (a), clause (1) (b), clause (2) and clause (3) are manifestly intended to deal with different topics and, therefore, one cannot be projected or read into another. On a careful and anxious consideration of the matter in the light of the fresh arguments advanced and discussions held on the present occasion we are definitely of the opinion that the Explanation in clause (1) (a) cannot be legitimately extended to clause (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2)."

As to the President's order, it was stated at p. 656:

"It will be noticed that under that proviso the President's order was to take effect "notwithstanding that the imposition of such tax is contrary to the provisions of this clause". This *non obstante* clause does not, in terms, supersede clause (1) at all and, therefore, *prima facie*, the President's order was subject to the prohibition of clause (1) (a) read with the Explanation."

Obviously, therefore, even on the *Bengal Immunity decision* (1) the assessments for the post-Constitution period in this case were hit by cl. (1) (a) of Art. 286 as also s. 30 (1) (a) (i) of the Act and were rightly held to be without jurisdiction.

The result, therefore, is that in our view this appeal should succeed in part, as we hold that the assessments for the two quarters of the pre-Constitution period were valid under sub-s. (2) of s. 4 of the Act and the.

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assessments for the post-Constitution period were invalid. In view of the divided success of the parties we further think that they should bear their own costs in the High Court and in this Court.

SARKAR J.—The respondents are a firm of merchants carrying on business in a part of the State of Orissa which was formerly the feudatory State of Pallahara. This State of Pallahara had merged in the Province of Orissa under an agreement with the Government of India, dated January 1, 1948. On December 14, 1948, the Government of Orissa under the powers conferred by s. 4 of the Extra Provincial Jurisdiction Act, 1947, and with the permission of the Government of India, issued a Notification applying the Orissa Sales Tax Act, 1947 (Orissa XIV of 1947), passed by the Legislature of Orissa, to the areas which previously constituted the feudatory States including Pallahara, then merged in Orissa. The respondents were assessed to sales tax under this Act in respect of their sales which took place during five quarters between July 1, 1949 and December 31, 1950. They had appealed under the provisions of the Act to higher authorities from the original orders of assessment, but were unsuccessful. They then applied to the High Court of Orissa on November 11, 1952, for an appropriate writ directing the Sales Tax Officer, the assessing authority and one of the appellants herein, to refrain from realizing the tax or from giving effect to the assessment orders in any manner whatsoever and quashing such orders and also prohibiting future assessment. By its judgment delivered on April 12, 1955, the High Court allowed the petition and cancelled the assessment orders. From that judgment the present appeal has come to this Court.

The question that I propose to discuss in this judgment is whether the respondents are liable to pay tax under the provisions of the Act in the circumstances which existed in this case and to which I shall refer a little later. The sections of the Act under which the tax is sought to be levied are set out below:

S. 1. (1) This Act may be called the Orissa Sales Tax Act, 1947.

(2) It extends to the whole of the Province of Orissa.

(3) This section shall come into force at once and the rest of this Act shall come into force on such date as the Provincial Government may, by notification in the Gazette, appoint.

S. 2. In this Act, unless there is anything repugnant in the subject or context,—

.....

(j) "year" means the financial year.

S. 4. (1) Subject to the provisions of sections 5, 6, 7 and 8 and with effect from such date as the Provincial Government may, by notification in the Gazette, appoint, being not earlier than thirty days after the date of the said notification, every dealer whose gross turnover during the year immediately preceding the commencement of this Act exceeded Rs. 5,000 shall be liable to pay tax under the Act on sales effected after the date so notified:

Provided that the tax shall not be payable on sale involved in the execution of a contract which is shown to the satisfaction of the Collector to have been entered into by the dealer concerned on or before the date so notified.

(2) Every dealer to whom sub-section (1) does not apply shall be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover first exceeded Rs. 5,000.

(3) Every dealer who has become liable to pay tax under this Act shall continue to be so liable until the expiry of three consecutive years, during each of which his gross turnover has failed to exceed Rs. 5,000 and such further period after the date of such expiry as may be prescribed and on the expiry of this latter period his liability to pay tax shall cease.

(4) Every dealer whose liability to pay tax has ceased under the provisions of sub-section (3) shall again be liable to pay tax under this Act with effect from the commencement of the year immediately following that during which his gross turnover again exceeds Rs. 5,000.

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It is conceded that the respondents are dealers within the meaning of the Act. The term "turnover" is defined in the Act but for the purpose of this judgment it can be taken in its popular sense. It is also unnecessary to consider ss. 5, 6, 7 and 8 of the Act, for nothing turns on them in this appeal.

Section 1 of the Act came into force in the Pallahara area on December 14, 1948, by virtue of the notification of that date mentioned earlier. On March 1, 1949, the Government of Orissa issued under s. 1 (3) of the Act a notification, being Notification No. 2267/F, appointing that date as the date on which the rest of the Act would come into force in the Pallahara area. It is not in dispute that March 1, 1949, has to be considered as the date of the commencement of the Act in the Pallahara area. That is the result of the definition of the commencement of an Act given in s. 2 (8) of the Orissa General Clauses Act, 1937. As will have been noticed s. 4 (1) of the Act required a date to be appointed before liability under it could arise. Such a date had been appointed by the Government of Orissa before the Act was applied to the areas previously belonging to the feudatory States and the Government felt that this appointment of a date would not be an appointment for these areas. The case before us has proceeded on the basis that that appointment was not a proper appointment under this section for these areas. In fact, the Government of Orissa had on March 1, 1949, issued a Notification No. 2269/F, purporting to appoint a date under s. 4 (1) for the areas previously covered by the feudatory States including the Pallahara State, then merged in Orissa. That Notification is in these terms:

In exercise of the powers conferred by sub-section (1) of Section 4 of the Orissa Sales Tax Act, 1947 (Orissa Act XIV of 1947), as applied to Orissa States, the Government of Orissa are pleased to appoint the 31st March, 1949, as the date with effect from which every dealer whose gross turnover during the year ending the 31st March, 1949, exceeded Rs. 5,000 shall be liable to pay tax under the said Act on sales effected after the said date.

So it would appear that in regard to Pallahara area two notifications were issued on March 1, 1949, by one of which under s. 1 (3) the rest of the Act was applied to, and by the other a day was appointed as required by s. 4 (1), for this area.

The sections under which liability to tax arises under the Act primarily are sub-ss. (1) and (2) of s. 4. I have said liability arises primarily because unless liability under either of them arises there is no liability under the Act at all. But once liability under either of these sub-sections arises, that liability continues for certain successive years under sub-s. (3) and when it has come to an end under that sub-section it can again revive under sub-s. (4). Unless however liability has arisen under sub-ss. (1) and (2), no liability arises under sub-ss. (3) and (4). The question that I propose to discuss is whether in the circumstances of this case, the respondents can be made liable under either sub-s. (1) or sub-s. (2) of s. 4.

I shall first consider sub-s. (1) of s. 4. In order that a liability under this sub-section may arise there has to be an appointment of a date as provided in it, for the liability is in respect of sales effected after that date. It is contended that such an appointment of a date was made by Notification No. 2269/F of March 1, 1949. The respondents say that the notification is invalid and that therefore no date under the sub-section has been fixed at all. I think that the respondents' contention is right. Under the sub-section, on a date being appointed a dealer becomes liable to tax on sales effected after that date provided his gross turnover during the year immediately preceding the commencement of the Act exceeds Rs. 5,000. Now the Act having commenced on March 1, 1949, and a year contemplated in the Act being under s. 2(j), a financial year, the year immediately preceding the commencement of the Act would be the year 1947-48. Therefore, the respondents' liability under the sub-section, would depend on his turnover for the year 1947-48 exceeding Rs. 5,000. But the notification said that the dealer whose gross turnover during the year ending March 31, 1949, that is, the year 1948-49, exceeded Rs. 5,000,

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would be liable to pay tax on the sales effected after the date mentioned in it. The notification, therefore, is not in terms of the section. It is contended that the words "whose gross turnover during the year ending the 31st March, 1949, exceeded Rs. 5,000" in the Notification are mere surplusage as they purported to say which dealers would be able to pay tax and this the section did not require it to say. It is therefore said that these words should be ignored and thereupon the notification would become unobjectionable. I am unable to agree that it is possible to ignore these words. The notification with these words has one meaning and without them a different one. The Government having issued the notification cannot now be permitted to say that it has a meaning other than that which its words bear. Having said that a dealer whose turnover in the year 1948-49 exceeded Rs. 5,000 would be liable to pay tax on sales after a date mentioned, the Government cannot now turn round and say that a dealer would be liable to pay tax on such sales under the sub-section though his turn-over during the year 1948-49 did not exceed Rs. 5,000. Whether the Government need have specified any year during which the turnover had to exceed Rs. 5,000 to give rise to the liability for the tax or not, is irrelevant. The question is whether the Notification has appointed a date as a result of which liability to pay tax under the sub-section arises. That it clearly has not. The Notification, therefore, is bad and has no effect at all. The result is that there has been no date appointed under the sub-section and no liability can therefore arise under it at all. It does not, as things stand, operate to fix any liability. It is as it were that the sub-section had not been brought into life. The appellants cannot, therefore, claim to levy any tax on the respondents under sub-s. (1) of s. 4.

The appellants then contend that even if as a result of no date having been fixed under sub-s. (1) no liability to pay tax arises under it at all and the respondents cannot be taxed under it, they are none the less liable to be taxed under sub-s. (2). Under sub-s. (2) a dealer can only be made liable if he is one "to

whom sub-s. (1) does not apply". It is clear that the words "to whom sub-s. (1) does not apply" mean, "who is not liable under that sub-section", for both sub-sections having been brought into force at the same time by one notification, they apply to all dealers together. The appellants say that, the respondents are dealers who are not liable under sub-s. (1) because no date having been appointed, no liability under it arises.

I am unable to accept this contention. When it is said that a person not liable under one provision shall be liable under another, a situation is contemplated in which the liability of the person under the former provision might have arisen. It does not seem to me to be possible to say that a person is not liable under a section, when no question of liability under it can arise at all, when it is really a dead letter in the statute book.

Further the appellants' contention seem to me to be against the scheme of the two sub-sections. Sub-section (1) applies to all dealers. Thus after a date has been appointed all dealers would be liable to pay tax under it if their turnover in 1947-48 exceeded Rs. 5,000. But suppose there are some dealers whose turnover in the year 1947-48 did not exceed Rs. 5,000. In such a case, sub-s. (2) would apply to them and them only, and make such of them liable to tax whose turnover in the year mentioned in it, exceeded Rs. 5,000. As to this there is no doubt. Thus it would appear that sub-s. (2) was not meant to apply to all dealers but to a class of them and tax some or all of this class. If the appellant's contention is right, then it would be possible for sub-s. (2) to apply to all dealers. This I conceive was not the intention. The result of accepting it would be that when no date has been appointed under sub-s. (1), the words, "every dealer to whom sub-s. (1) does not apply" would mean all dealers and when a date has been appointed, it would mean only such dealers whose turnover in 1947-48 does not exceed Rs. 5,000. I am quite clear in my mind that the words were intended to refer to a definite class of people. It could not have been intended that the same

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words would refer to different classes of people according as a date under sub-s. (1) was appointed or not. The scheme is that some might be made liable under sub-s. (1) and those that escape liability under it might be made liable under sub-s. (2). Sub-section (2) was not intended to have any operation at all till a date was appointed under sub-s. (1) and a liability under it might have arisen.

It seems to me that if liability under sub-s. (2) arose without a date under sub-s. (1) having been appointed, the result would be anomalous. It would make a dealer liable under both sub-sections which is plainly something which the Act did not intend to do. An illustration will make this clear. Under sub-s. (2) a dealer will be liable to pay tax with effect from the commencement of the year immediately following that during which his gross turnover first exceeds Rs. 5,000. The year from the commencement of which liability to pay tax arises under it must be a year commencing after the Act comes into force, for otherwise the Act will have been given a retrospective operation and this, there is no reason to think, was intended. Now this year must be one immediately following that year when the dealer's turnover first exceeds Rs. 5,000. This preceding year, however, need not be one commencing after the Act, for the sub-section does not say so. If such year is before the commencement of the Act, that would not make the sub-section operate retrospectively either, for the tax would be payable only on sales after the commencement of the Act and that year would only furnish the requisite on which liability arises: see *The Queen* v. *Inhabitants of St. Mary, White Chapel* (1). I may point out that if this view is not right, then in the present case the assessment orders could not have been made under sub-s. (2), for they were based on the respondents' turnover for 1948-49, exceeding Rs. 5,000 and this year did not commence after the commencement of the Act.

If the appellants are correct in their contention, then the respondents' turnover having first exceeded

(1) (1848) 12 Q. B. 120, 127; 116 E.R. 811, 814.

Rs. 5,000 in 1948-49 they became liable under sub-s. (2) to pay tax on all sales made from the commencement of the succeeding year, that is, from April 1, 1949. This liability to pay the tax arose on the expiry of the year 1948-49 when their turnover first exceeded Rs. 5,000, that is, it arose on April 1, 1949, though the assessment had to be made later, as it must necessarily be made periodically, after sales have been effected. The liability that arose on April 1, 1949, is to continue for all times but if for three successive years their turnover did not exceed Rs. 5,000, then after these three years and a further period prescribed the liability would cease under sub-s. (3). Assume that the period prescribed was three months. So the respondents' liability having arisen on April 1, 1949, it continued in respect of all sales made from that date till at least June 30, 1952, and the taxing authorities were entitled to make assessment orders under sub-s. (2) in respect of such sales from time to time. Now suppose, on July 1, 1949, the Government issued a notification appointing August 1, 1949, as the date under sub-s. (1). Immediately all dealers whose turnover in 1947-48 had exceeded Rs. 5,000 became liable to pay tax under that sub-section on sales effected after August 1, 1949. Assume that the respondents' turnover for 1947-48 was in excess of Rs. 5,000. They then became liable to pay tax also under sub-s. (1) on all sales effected after August 1, 1949. The result is that on sales effected after this date, the respondents became liable to pay tax under both the sub-sections at the same time. I cannot conceive that such a result could have been intended.

I will now put it from another point of view. Under sub-s. (3) once liability to pay tax arises, it will go on for three years and such further time as may be prescribed which we will assume was three months, though the turnover failed to exceed Rs. 5,000 for any of these years and after that the liability will cease. In the present case the respondents were first assessed by an order made on May 31, 1951, on sales in the quarter ending September 30, 1949. I will assume

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that the liability to pay the tax arose under sub-s. (2). Suppose now that for the year 1949-50, 1950-51 and 1951-52 the respondents' turnover was below Rs. 5,000. On these facts their liability ceased on June 30, 1952. Now suppose, on June 1, 1951, that is, the day after the order of assessment in respect of the liability under sub-s. (2) had been made, July 1, 1951, had been appointed the date under sub-s. (1) and it was found that the respondents' turnover for 1947-48 had exceeded Rs. 5,000. They immediately became liable to pay tax on sales effected after July 1, 1951, and such liability would then under sub-s. (3) continue for 1951-52, 1952-53, 1953-54 and up to June 30, 1954. The position then would be that under sub-s. (3) the respondents' liability can be said to have come to an end on June 30, 1952, and also to have continued up to June 30, 1954. That would be an absurd result.

For all these reasons it seems to me that no liability arises under sub-s. (2) unless a date has been appointed under sub-s. (1) and a liability can arise under the latter sub-section. The fact that under sub-s. (1) liability is made to arise on the turnover of the year immediately preceding the commencement of the Act, to my mind, shows that it was contemplated that the date under sub-s. (1) would be fixed soon after the Act commenced. That would indicate that the intention was that both sub-ss. (1) and (2) of s. 4 would begin to operate at the same time. It was not contemplated that any question of liability under sub-s. (2) would arise before such a question under sub-s. (1) arose.

I would, therefore, hold that in the present case the appellants are not entitled to levy any tax on the respondents under sub-s. (2). In this view of the matter I find it unnecessary to go into the other questions discussed at the bar.

The conclusion that I come to is that the appeal fails and it be dismissed with costs.

PER CURIAM.—The appeal is allowed in part. The decree, in so far as it sets aside the assessments for the quarters ending on June 30, 1950, September 30, 1950 and December 31, 1950, is upheld, but the decree, in so far as it sets aside the assessments for the

quarters ending on September 30, 1949 and December 31, 1949, is reversed and the orders of assessment of the Sales Tax authorities are restored. Parties to bear their own costs in the High Court as well as in this Court.

Appeal allowed in part.

MAHADAYAL PREMCHANDRA

v.

COMMERCIAL TAX OFFICER, CALCUTTA & ANOTHER

(S. R. DAS C. J., BHAGWATI, S. K. DAS, J. L. KAPUR and VIVIAN BOSE JJ.)

Sales Tax—Sales by Mills in Kanpur to customers in Bengal—Agent of Mills in Bengal receiving commission on sales, if a dealer within the definition and liable to sales tax—Turnover of agent, if can include price of goods sold by Mills—Bengal Finance (Sales Tax) Act, 1941 (Ben. VI of 1941), s. 2(c).

The appellants were commission agents in West Bengal for certain Mills in Kanpur. They were paid commission once at the end of each year on all the sales effected by the Mills in West Bengal. The orders were placed with the Mills either through the appellants or directly by the customers but goods were supplied to customers directly and payments were made through banks. The appellants, except for canvassing business for the Mills, did not take any part in the sale transactions. The Mills only maintained a personal account of the appellants in which the commission was credited. The Commercial Tax Officer was doubtful of the liability of the appellants to sales tax on these transactions and referred the matter to the Assistant Collector for opinion. The Assistant Collector, without giving the appellants any opportunity to be heard, expressed the opinion that the appellants were liable and directed the Commercial Tax Officer to do the needful. The latter, thereupon, assessed the appellants to tax holding them liable for all such sales. The appellants preferred this appeal by special leave :