

subordinates. I have conducted inquiries of a very similar nature myself, and it certainly never occurred to me that, in questioning any one of my subordinates against whom allegations of misconduct had been made, I was bound to act in my magisterial capacity and could only record any statement which they might see fit to make subject to the formalities and safeguards prescribed by law, i. e. by section 164 of the Code of Criminal Procedure. In my opinion the statements made by Sayid Haidar Raza to the honorary magistrates, when he was called into their presence and confronted with Sukhari on the 26th of June, 1913, were not matters required by law to be reduced to the form of a document. Consequently section 91 of the Indian Evidence Act has no application. The honorary magistrates have been examined in the courts below and have proved what took place before them on the date abovementioned, and what Saiyid Haidar Raza stated when the matter was unexpectedly sprung upon him. I have considered the evidence, and I see no reason to doubt that the applicant was surprised into the making of true admissions against himself, and that the oral evidence on which the first court based its conviction of the applicant was reliable as well as legally admissible. I have considered the provisions of section 24 of the Indian Evidence Act, and am satisfied that they do not apply to the circumstances of this case. The result is that I dismiss this application.

*Application dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggot.*

EMPEROR *v.* HAZARI LAL. \*

*Act (Local) No. I of 1900 (United Provinces Municipalities Act), sections 147, 152—Notice—Disobedience to lawfully issued notice—Competence of accused to challenge validity of notice.*

*Held*, that section 152 of the United Provinces Municipalities Act, 1900, does not prevent a person who may be prosecuted for disobedience to a notice issued by a municipal board from establishing the defence that the notice in question was not as a matter of fact the board's notice, inasmuch as it was not signed by any one legally authorized to sign such notices on behalf of the board.

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\* Criminal Revision No. 1227 of 1913, from an order of E. L. Norton, Magistrate, first class, of Allahabad, dated the 2nd of December 1913.

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EMPEROR  
v.  
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THE applicant, Hazari Lal, was prosecuted under section 147 of the North-Western Provinces and Oudh Municipalities Act for having disobeyed a "written notice lawfully issued" by the Municipal Board of Allahabad, on 24th of August 1913, requiring the demolition within ten days of a certain *torii* (stone bracket or balcony support) constructed by him without previous sanction of the board. At the trial, one of the defences set up by Hazari Lal was that he was not bound to comply with the notice inasmuch as it was not a notice lawfully issued by the Municipal Board. The Magistrate was of opinion that if Hazari Lal wanted to take exception to the notice on any ground he should have appealed against it, under section 152 of the Municipalities Act, to the Commissioner; and, following the ruling in I. L. R., 26 All., 386, he held that as Hazari Lal had preferred no such appeal, the validity of the notice could not be questioned by him at the trial. The Magistrate convicted him and sentenced him to a fine of Rs. 40. Hazari Lal applied to the High Court in revision.

Munshi *Purushottam Das Tandan* for the applicant :—

The prosecution had to prove that the notice was lawfully issued by the Municipal Board. The notice was signed by M. A. Baqi Khan, a member of the board. Under the bye-laws of the Allahabad Municipality notices under section 87 of the Act could be issued lawfully on behalf of the board only by the senior vice-chairman and the member in charge of conservancy jointly. M. A. Baqi Khan was neither of these two office bearers. He had no authority to issue the notice; the notice issued by him was not a lawful notice issued by the municipal board. Hazari Lal was entitled to raise this defence at the trial. Section 152 of the Act says that where there is a lawfully issued notice that notice cannot be called in question except by way of appeal to the Commissioner. The case of *Emperor v. Shadi* (1) which is relied on by the Magistrate does not go beyond this. Here the question is not whether a lawfully issued notice is or is not justified by the circumstances of the case; the plea taken is that there is no lawfully issued notice at all. The ruling cited has no application to such a case.

(1) (1904) I. L. R., 26 All., 386.

The Assistant Government Advocate (Mr. *R. Malcolmson*), for the Crown :—

The bye-laws do not lay down that the notices are to be signed and sealed by both the senior vice-chairman and the member in charge of conservancy. The signature of one of them may be sufficient if the notice is in fact authorized by both of them. The senior vice-chairman had inspected the locality and there is nothing to show that the notice was not authorized by him. Lala Bisheswar Das was the member incharge of conservancy; he had arranged with M. A. Baqi Khan to perform his duties for a short period.

Munshi *Purushottam Das Tandan*, in reply :—

These facts have not at all been proved or gone into. The prosecution should have proved fully that the notice was a lawful notice.

PIGGOTT, J.—Hazari Lal, a resident of Allahabad, has been convicted of disobeying a written notice lawfully issued by the Municipal Board of Allahabad, under the powers conferred upon it by the United Provinces Municipalities Act of 1900. He comes to this Court in revision, and the one substantial point raised by him is that the prosecution has not proved that the notice which he is alleged to have disobeyed was a notice lawfully issued by the Municipal Board of Allahabad, under the powers conferred upon it. If this were a point taken for the first time in revision, I am not certain that I should have considered it my duty to go into it. I find, however, that this defence was in substance taken before the court below and that the trying Magistrate refused to entertain it. The Magistrate was of opinion that, if he had entered into this defence, he would be permitting the accused before him to contravene the provisions of section 152 of the Municipalities Act. That section, however, applies to a notice issued by the board, and the point taken in the present case is that the accused had received no notice issued by the board under the powers conferred upon it by the Act. The paper which was served upon Hazari Lal on the 28th of August, 1913, contained a direction with which he admittedly failed to comply within the period prescribed by it. It did not purport on the face of it to be a notice issued by, or by order of the Municipal Board, but on behalf of the

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member in charge of ward no. 4, and it was signed by a single member of the board. The notice was one covered by the provisions of clause 5 of section 87 of the Municipalities Act, that is to say, it was a notice such as the Municipal Board was empowered to issue under the abovementioned provision of the law. The only question, therefore, was whether the board had issued this notice or not. The powers conferred upon the Municipal Board by this section are important, and the legislature found it necessary by the Amending Act No. I of 1907, to make special provision for the circumstances under which alone these powers could be delegated. I think the accused in this case was entitled to set up the defence that the paper served upon him was not a notice issued by the Board or by the authority of any person to whom the powers exercisable by the Board as a whole had been lawfully delegated. The defence having been set up, the Magistrate ought to have inquired into it and called upon the prosecution to produce evidence sufficient to satisfy him on this point. I, therefore, set aside the conviction and sentence in the case and return the record to the court below with the following directions. The Magistrate will take up the case at the point at which it stood when the accused entered his defence, and will require the prosecution to produce evidence to satisfy him, if possible, that the notice served upon Hazari Lal on the 28th of August, 1913, was a notice issued by the authority of the Board or by the authority of persons to whom the powers of the Board under section 87, clause 5, of the Municipalities Act of 1900 had been lawfully delegated.

*Conviction set aside.*