

correct, this in itself is sufficient ground for dismissing the plaintiff's suit. Even if we were to hold that a minor can avoid a decree by a separate suit solely on the ground of the gross negligence of his guardian, we do not think under the circumstances of this case any such negligence has been established, bearing in mind, in particular, the fact of the age of Lajja Ram, who the learned Subordinate Judge says was a very intelligent young man. We think the view taken by the Subordinate Judge was correct and that his decree should be restored. We accordingly allow the appeal, set aside the decree of the learned District Judge and restore the decree of the court of first instance with costs.

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BENI PRASAD  
v.  
LAJJA RAM.

*Appeal allowed!*

## REVISIONAL CRIMINAL.

*Before Justice Sir Pramoda Chavan Banerji.*

EMPEROR v. GHAMMAN AND OTHERS.\*

1916  
April, 14.

*Act (Local) No. X of 1900 (N.-W. P. and Oudh Municipalities Act), section 132*

*—Breach of rule made under clause (e) of section 130.—Notice.*

In order to render a person liable to punishment for breach of a rule made under clause (e) of section 130 of the Municipalities Act (Local I of 1900), by reason of the continuance of sale or exposure for sale of certain specified articles upon any premises which were at the time of the making of such rule used for such purpose, it is necessary that six months' notice in writing should have been served upon him in the manner provided by law; and conviction in the absence of such notice is bad in law.

THE facts of this case are fully set forth in the judgement of the Court.

The Assistant Government Advocate, (Mr. R. Malcomson), for the Crown.

The opposite parties were not represented.

BANERJI, J.—This case has been referred by the learned Sessions Judge of Budaun with the recommendation that the conviction of the twenty-three accused persons in this case under section 132 of the Municipalities Act, should be set aside and the fines imposed on them refunded. It appears that the Municipal Board of Ujhani made a rule under section 130 of the

\* Criminal Reference No. 190 of 1916.

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Act, prohibiting the exposure for sale or sale of fruits and vegetables outside the limits of the Municipal market unless the persons so selling, or exposing for sale, obtained and held a licence. The rule was sanctioned by Government and was publicly proclaimed on the spot. The accused persons not having obeyed the rule were prosecuted and convicted and sentenced to different amounts of fine. The learned Sessions Judge is of opinion that they were protected by the proviso to section 130 of the Act, which is to the effect that "no person shall be punishable for breach of any rule made under clause (a), or clause (e), by reason of the continuance of such manufacture, preparation or exposure for sale or sale, upon any premises which are at the time of the making of such rule used for such purpose, until he has received from the Board six months' notice in writing to discontinue such manufacture, preparation or exposure for sale, or such sale in such premises." Section 143 prescribes the mode in which notice is to be served. It is admitted in the present case that notice was not served on each of the twenty-three accused in the manner laid down in section 143. It was not proved that the accused were doing anything beyond continuing the exposure of their goods for sale or the sale of fruits and vegetables at a place called the *Gandanala*. That was the place according to the Secretary's evidence, where fruits and vegetables were exposed for sale and sold, and the accused apparently were exposing their goods and selling them at that particular place. This was clearly a case in which the accused *continued* the act which they were prohibited from doing by the new rule promulgated by the Municipality. In order to render them liable to punishment for committing such breach, it was necessary that notice should have been served on them in the manner provided by law. As this was not done they were not liable to punishment and are protected by the proviso to section 130. I agree with the view taken by the learned Sessions Judge and accepting his recommendation, I set aside the convictions and sentences and direct that the fines, if paid, be refunded.

*Conviction set aside.*