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made or given. In my opinion this section does not deal with the jurisdiction of the court. Jurisdiction arises under section 12 on the order or consent in writing of the Health Officer. If the applicant had disobeyed the summons, he could not have been prosecuted under section 174 of the Indian Penal Code. When, however, he appeared and stood his trial, section 15 is not so worded as to deprive the court of jurisdiction. It only prohibits the issue of summons, but not the taking place of a trial.

It was further argued that the fine of Rs. 100 was excessive. I do not think so, having regard to the frequency of this kind of offence. I dismiss this application.

Before Mr. Justice Dalal.

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EMPEROR v. CHIRANJI LAL.\*

*Criminal Procedure Code, section 108—Act No. XLV of 1860 (Indian Penal Code), section 153A—Proof of one solitary act alone not sufficient for section 108.*

A person who is found on one occasion only circulating notices which may have the effect of promoting enmity between classes may possibly be prosecuted under section 153A of the Indian Penal Code, but he cannot be proceeded against under section 108 of the Code of Criminal Procedure.

THE facts of this case sufficiently appear from the judgement of the Court.

Mr. *Shambhu Nath Seth*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

DALAL, J. :—In my opinion Chiranji Lal was wrongly proceeded against under section 108 of the Code of Criminal Procedure, when he ought to have been

\*Criminal Revision No. 261 of 1928, from an order of P. C. Plowden, Sessions Judge of Bareilly, dated the 30th of November, 1927.

prosecuted under section 153A of the Indian Penal Code. The facts found by the subordinate courts are that on one and only one occasion Chiranji Lal, who is Assistant Secretary of the Arya Samaj at Bareilly, gave out to a peon of the society certain notices to be affixed publicly in the city of Bareilly, the contents of those notices being such as to promote feelings of enmity or hatred between Muhammadans and Arya Samajists. Part IV of the Criminal Procedure Code is headed "Prevention of offences." It does not provide for punishment of offences already committed. That part of the Criminal Procedure Code deals with steps to be taken to prevent offences in future. The judgement of neither subordinate court gives any indication of Chiranji Lal having ever before disseminated such literature, or of any fear that he would do so in future unless bound over and prevented. It is obvious to me that proceedings were taken under section 108 of the Criminal Procedure Code to avoid the trouble and possible refusal of Government to prosecute under the provisions of section 153A of the Indian Penal Code. When the law has provided certain sanctions, it cannot be permitted that the same action may be taken without sanction by adopting a different course. Chiranji Lal at once admitted that he had given out the notices for public circulation and pleaded that he had not read them before giving them out. This is not the spirit of a man prepared to do an undesirable act at any cost. To take proceedings under section 108 of the Criminal Procedure Code there ought to be evidence that, if not prevented, the person accused would continue to act in the way in which he had done. The words of the section are "disseminates, or attempts to disseminate", and do not cover only one act, in which case the words would have been "has disseminated or has attempted to disseminate." Both the courts deal with one particular offence as if they were trying a

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charge under section 153A of the Indian Penal Code, without inquiring into the reason why the applicant should be bound over. If the analogy of the action taken in this case were applied to other sections of chapter VIII, evidence of the commission of one theft would be sufficient to bind a man over under section 110 of the Criminal Procedure Code, and one beating given by one man to another would be sufficient to bind him over under section 107 of the Criminal Procedure Code. When substantive offences are committed the law does not provide for an easy way of dealing with them under chapter VIII of the Criminal Procedure Code. In the present case if Chiranji Lal, in spite of some of his notices being confiscated, had continued in other ways to give out other notices for publication, this would certainly have been a case to be dealt with under section 108 of the Criminal Procedure Code. In the present case what has been proved against him is the commission of *one* particular offence at one particular time under section 153A, and there is no evidence whatsoever of his having done so before, or of his having an intention of doing so in the immediate future. In my opinion the proceedings under section 108 of the Criminal Procedure Code were not legally justified. I set aside the order of the Magistrate, dated the 20th of October, 1927, and discharge the applicant.