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therefore, was perfectly correct and it is not open to question by way of revision.

It has been urged upon us that the order was passed very late and that it was likely to frighten the intending purchasers. As may be guessed, the sale proclamation was issued long before the 6th of July, for the 9th of July had already been fixed for sale. If it be a fact that owing to the late notification of the claim, any intending purchaser has been frightened, not knowing clearly what was the matter, it would be a matter for the Subordinate Judge to inquire in a proceeding, if any has been taken, under order XXI, rule 90, of the Code of Civil Procedure. That has nothing to do with the case before us, at present.

I agree, therefore, that the appeal should be dismissed and there is no good ground for treating the appeal as a petition of revision.

BY THE COURT:—The appeal is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Dalal and Mr. Justice Boys.*

EMPEROR v. JALAL-UD-DIN.\*

Act (Local) No. IV of 1910 (United Provinces Excise Act), section 10(2)—Excise Commissioner—Power of, to dismiss subordinate excise officer—Government of India Act, section 96B, (2)—Competence of Local Government to delegate powers—Sanction to prosecute.

The Local Government is competent to delegate to the Excise Commissioner its power to dismiss an Excise Inspector, and if the Commissioner, in the exercise of such delegated

\* Criminal Revision No. 409 of 1925, from an order of A. G. P. Pallan, Sessions Judge of Moradabad, dated the 6th of July, 1925.

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power, dismisses an Inspector, such dismissal is not a dismissal by the Government, but by the Commissioner. Where, therefore, an Inspector, having been dismissed by the Commissioner, was thereafter prosecuted for having taken an illegal gratification, it was held that the sanction of the Government was not a necessary preliminary to his trial. *In re Sheikh Abdul Kadir Saheb* (1), disapproved. *Emperor v. Lala Khan Chand* (2), not applied.

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THIS was an application in revision from a conviction under section 161 of the Indian Penal Code, the sole ground being the absence of the preliminary sanction of the Local Government which was alleged to be necessary to the trial. The facts of the case, so far as they are necessary for the purposes of this report, appear from the earlier portion of the judgement of the High Court.

Mr. *R. F. Bahadurji* (with him Mr. *Nehal Chand* and Munshi *Kedar Nath*), for the applicant.

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

DALAL and BOYS, JJ:—Jalal-ud-din, Excise Inspector of the Bijnor district, applied to the High Court in revision to have his conviction under section 161, Indian Penal Code, for taking an illegal gratification from a liquor contractor set aside. The learned Judge to whom the application was presented referred the matter to a Bench of two Judges and also issued notice to Jalal-ud-din to show cause why the sentence passed on him should not be enhanced. The applicant was sentenced by a magistrate of the Moradabad district, to whose court the case was transferred from Bijnor, to simple imprisonment for one month and a fine of Rs. 500, with three months' further simple imprisonment in default.

(1) (1916) 33 Indian Cases, 643.

(2) (1922) 72 Indian Cases, 523.

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The point raised in revision was that the prosecution of the applicant without the sanction of the Local Government was bad and so the trial should be set aside. The applicant is an Excise Inspector who was appointed to his post by the Local Government in 1909. Under section 197(1) of the Code of Criminal Procedure the sanction of the Local Government is necessary for the prosecution of any public servant who is not removable from his office save by or with the sanction of the Local Government or some higher authority. The applicant was appointed prior to the passing of the United Provinces Act IV of 1910. Under section 10(2) of that Act the Local Government is given power by a notification to appoint an officer referred to as the Excise Commissioner, *vide* clause (a), and to delegate to that officer all or any of its powers under the Act, except the power conferred by section 40 of the Act to make rules. In pursuance of such authority the Local Government issued a notification under section 10(2) (f) of the United Provinces Excise Act on the 8th of September, 1924. It is admitted that an Excise Commissioner has been duly appointed. Under the notification No. 295/XIII—110 of the 8th of September, 1924, (*U. P. Gazette* of the 13th of September, 1924, page 1249) the Local Government has delegated to the Excise Commissioner, among others, the following powers:—

“ 9. Power to appoint all officers of the Excise department below the rank of Assistant Excise Commissioner: provided that the appointment and promotion, removal or dismissal of Excise Inspectors shall be subject to the general control of the Local Government.

“ 10. Power to censure, withhold promotion from, reduce to a lower post, suspend, remove or dismiss all officers of the Excise department below the rank of Assistant Excise Commissioner.”

There is a proviso added to the powers that in case of dismissal, removal or reduction, the Excise Commissioner shall follow the procedure laid down in rule XIV of the rules made by the Secretary of State under section 96B(2) of the Government of India Act. According to this notification the applicant, who is an excise officer below the rank of Assistant Excise Commissioner, may be dismissed by the Excise Commissioner. He is, therefore, removable from his office by an authority lower than that of the Local Government and without the sanction of that Government.

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The arguments advanced by the applicant's learned counsel were directed to the following points :—

(1) That the applicant having been appointed prior to the date of the notification, he could not be dismissed by the Excise Commissioner.

(2) That the notification, in so far as it gave power to the Excise Commissioner to dismiss the applicant, was *ultra vires* to that extent.

(3) That the authority of the Excise Commissioner was delegated authority and even when he dismissed an excise officer it must be taken as if the dismissal was really made by the Local Government through the agency of the Excise Commissioner.

The authority No. 10 of the notification quoted by us above makes it clear that the Excise Commissioner has been given power of dismissal of excise officers below the rank of Assistant Excise Commissioner appointed even prior to the date of the notification. In our opinion the applicant could be dismissed by the Excise Commissioner.

By reference to various other notifications it would be shown that the notification to the extent of the

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authority No. 10 was not *ultra vires*. Reference was made to the Government of India Act, section 96B(1), wherein it is enacted that "subject to the provisions of this Act and of rules made thereunder, every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure . . . but no person in that service may be dismissed by any authority subordinate to that by which he was appointed . . ." It was argued that the applicant, having been appointed by authority of the Local Government, may not be dismissed by any authority subordinate to the Local Government, and if any rule is made by the Local Government to that effect, it would be contrary to the provisions of section 96B(1). The clause, however, begins with the words "Subject to the provisions of this Act and of rules made thereunder." Clause (2) of the same section enacts that "the Secretary of State in Council may make rules for regulating the classification of the Civil Services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General-in-Council or to a Local Government, or authorize the Indian legislature or local legislatures to make laws regulating the public services."

Obviously the notification of the Local Government referred to above was made under the rules referred to in clause (2). The argument that such rules can be framed with respect to officers to be appointed in future cannot hold when we consider the proviso to section 96B(2) which safeguards the existing or recurring rights only of persons appointed by the Secretary of State prior to the commencement of the Government of India Act, 1919. There would not

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have been such a proviso if it was intended that the existing or recurring rights of all public servants appointed prior to the commencement of the Act were to be retained. In the notification itself reference is made to rules made by the Secretary of State under section 96B(2) of the Act. The Secretary of State for India has framed rules under section 96B(2) of the Government of India Act, 1919, regulating the classification of the civil services in India, their conditions of service, discipline and conduct. Those rules also provide for delegation of powers. They are published in the *Gazette of India* of the 21st of June, 1924, at p. 552 (No. F472/II—23). By rule 1 the following classification is made of officers of the Local Government :—

1. The All-India services,
2. The Provincial services,
3. The Subordinate services,
4. Officers holding special posts.

An Excise Inspector may come under class 2 or 3. The definition of Provincial services given in rule III proves that he comes under class 3. The Provincial services of every Local Government are detailed in a schedule to the rules, and the schedule relating to the United Provinces includes an Assistant Excise Commissioner and no officer lower in rank in that department. The applicant, therefore, is a member of the subordinate services, which are defined in rule IV as consisting of all minor administrative, executive and ministerial posts to which appointments are made by the Local Government or by an authority subordinate to the Local Government. Under rule XV, a Local Government is empowered to delegate to any subordinate authority, subject to such conditions, if any, as it may prescribe, any of the powers conferred by rule XIII in regard to officers of the subordinate

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services. Proviso to this rule relates to an appeal to the Local Government. Rule XIII lays down that "without prejudice to the provision of any law for the time being in force, the Local Government may for good or sufficient reasons remove or dismiss any officer holding a post in a . . . subordinate service." The Excise Act does not interfere with the Local Government's power of removal or dismissal; in fact, it gives such power and the power of delegation of authority over again. We are of opinion, therefore, that the authority No. 10 granted by the notification is not beyond the power of the Local Government to grant.

Coming to the question of delegation, once the Local Government has delegated its power, the authority which actually removes the public servant from office is not the authority of the Local Government but the authority to whom the power is delegated. To take an instance, the HON'BLE CHIEF JUSTICE of this Court has been authorized and empowered under section 6 of the Letters Patent of this Court, by the Crown acting in pursuance of an Act of Parliament, to appoint officials of this Court and to dismiss them. If the argument of the applicant's learned counsel is to prevail, it may with equal cogency be argued that every official down to an orderly peon of this Court is appointed and removed by the Crown through the agency of the CHIEF JUSTICE and for his prosecution under section 161 the sanction of the Local Government would be necessary. We do not think that such an argument would be accepted. There is no mention made in section 197(1) of the Code of Criminal Procedure of any delegated authority. Obviously the intention was to simplify the law regarding sanction in the new Code of Criminal Procedure, and the circle of public servants for whose prosecution for bribery