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dispensing with securities pending an appeal, which possibly may be successful, may be said to be an incidental order that may be just or proper.

The second point raised in this application is whether the appellate court could grant bail in a case where an order has been made under section 107. Section 498 of the Code of Criminal Procedure enacts: "The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or court of session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police officer or Magistrate be reduced." This again is in the very widest terms. Authority is in my opinion clearly given to an appellate court, to the High Court or court of session, in any case to direct that any person be admitted to bail. I find it difficult to construe this section in any other manner.

This application in revision is allowed and the record is sent back to the sessions court in order that the learned Additional Sessions Judge may proceed with the appeal. The original order of the sessions court dated the 19th of February, 1932, is restored.

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*Before Mr. Justice King and Mr. Justice Thom.*

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*April*, 28.

EMPEROR *v.* HAR PRASAD.*

*Municipalities Act (Local Act II of* 1916), *sections* 307, 318, 321—*Non-compliance with notices to stop and remove constructions—No appeal to District Magistrate, challenging lawfulness of notices—Court convicting for non-compliance can not question lawfulness of the notices.*

Where notices under sections 186 and 211 of the Municipalities Act, 1916, requiring a person to stop and to remove certain constructions being made and already made by him, were served upon him, and he did not file any appeal under

*Criminal Reference No. 810 of 1931.

section 318 against these notices to the District Magistrate, it was *held* that according to section 321 the court convicting the person under section 307 for non-compliance with the notices had no authority to question the validity of the notices. On failure of the accused to avail himself of the remedy under section 318, the criminal court was precluded by section 321 from considering the question whether the notices were valid or invalid. In the present section 307 the word "lawfully", which appeared in the corresponding section 147 of the former Municipalities Act, has been omitted and there is nothing in the language of section 307 which indicates that it is the duty of the court to satisfy itself that the notices were "lawfully" issued by the Municipal Board.

The applicant was not represented.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

Mr. *Krishna Murari Lal*, for the Municipal Board.

KING and THOM, JJ. :—This is a reference by the learned Sessions Judge of Mainpuri recommending that a conviction and sentence passed by a Magistrate under section 307 of the U. P. Municipalities Act, 1916, be set aside.

The facts are that there was a certain plot No. 2357 situated within the limits of the Mainpuri municipality. In the plot there is a *nallah* through which the drainage of the locality passes. The accused Har Prasad alias Lallu is alleged to have started making a certain construction which encroached upon the *nallah*, partly blocking it up and interfering with the drainage. The Municipal Board issued a notice to him under section 186 of the Municipalities Act, which was served upon him on the 30th of October, 1928, requiring him to stop immediately the construction which he was making without permission. The accused did not comply with this notice, which admittedly was served upon him.

On the 21st of June, 1929, a second notice was served upon him by the Municipal Board under section 211 ordering him to remove the construction, which

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was encroaching upon the public drain, within one month. The accused neglected to comply with this notice also. The Municipal Board thereupon instituted the prosecution under section 307 for failure to comply with the two notices. The case was tried summarily. It was proved and admitted that the accused had been served with the two notices issued by the Municipal Board. It was also proved that he had not complied with the notices. The accused maintained that he had not made any encroachment on the public drain and therefore the Municipal Board had no jurisdiction to issue the notices. This was his only ground of defence. The trial court held that, as the accused was entitled under the Municipalities Act to appeal to the District Magistrate under section 318, if he had any objection to complying with the notices served upon him, and as he had failed to avail himself of that remedy, the criminal court was precluded under section 321 from considering the question whether the notices were valid or invalid. The result was that the accused was fined Rs. 15 for each offence.

The learned Sessions Judge was of opinion that the trial court was not precluded from going into the question whether the notices were legal and valid and held that the Magistrate should have taken evidence to show that the construction made by the applicant was an illegal construction to which the provisions of sections 186 and 211 were applicable. The learned Sessions Judge therefore has made this reference recommending that the conviction and sentence be set aside and the Magistrate be directed to proceed with the case according to law. This reference first came before a learned single Judge of this Court who considered that it raised an important question of law and directed that it be laid before a Bench of two Judges. The Municipal Board has been represented before us by counsel. No one appears on behalf of the accused.

The main question which we have to consider is whether the Magistrate was bound, or authorised, to go into the question whether the notices served by the Municipal Board upon the accused were legal and valid. Section 318 gave to the accused a remedy by way of appeal to the District Magistrate (or to such officer as the Local Government may appoint for such purpose) to challenge the legality or validity of the notices served upon him under sections 186 and 211 of the Municipalities Act. The accused neglected to avail himself of the remedy prescribed by statute. It appears to us that in these circumstances the Magistrate was perfectly right in holding that under the provisions of section 321 he was precluded from questioning the legality or validity of the notices. Sub-section (1) of section 321 runs as follows: "No order or direction referred to in section 318 shall be questioned in any other manner or by any other authority than is provided therein." The language seems to us to be perfectly clear. Section 318 expressly lays down that "Any person aggrieved by any order or direction made by a Board under the powers conferred upon it by section 186 or 211 may, within thirty days from the date of such direction or order, appeal to the District Magistrate." Section 321 clearly shows that this is the only method by which the person served with a notice can challenge the validity of that notice and, if he fails to do so, no other authority such as a criminal court can question the validity of the notice.

The learned Sessions Judge referred to a ruling of this Court, *Emperor* v. *Piari Lal* (1). In that case it was held that no one can be convicted of disobedience of a written notice of a Municipal Board for demolition of certain constructions unless the court is satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by

(1) (1914) I.L.R., 36 All., 185.

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the Municipalities Act. The Court relied upon the language of section 147 of the U. P. Municipalities Act of 1900 (Act I of 1900). That section provides a penalty for any person who disobeys any *lawful* direction given by the Board by public notice *lawfully* issued by it under the powers so conferred, etc. In view of the language of that section it was held that it was incumbent upon the trial court to satisfy itself that the notice had, in fact, been lawfully issued by the Board under the powers conferred upon it by the Act. The decision clearly proceeded on the language of section 147 of the old Municipal Act. The legislature has introduced important changes in the language of section 307 of the Municipalities Act of 1916, which corresponds to section 147 of the old Act. Under section 307 it is laid down that "If a notice has been given under the provisions of this Act to a person, requiring him to execute a work or do or refrain from doing anything within a time specified in the notice, and if such a person fails to comply with such a notice, then the said person shall be liable, on conviction . . ." It will be noticed that in the present section 307 the word "lawfully" has been omitted. There is nothing in the language of section 307 which indicates that it is the duty of the court to satisfy itself that the notice was "lawfully" issued by the Municipal Board; probably this change of language was intentional, in order that it should be consistent with the provisions of section 321 which prohibits any authority, other than the appellate authority specified in section 318, from questioning the validity of the notice. The view which we take of the present law is supported by a decision of this Court in the case of *Emperor* v. *Mannu* (1).

In our opinion, the view taken by the trial court was perfectly right and the learned Sessions Judge has not

(1) (1920) I.L.R., 42 All., 294.

appreciated the effect of the amendment of the statute. We accordingly reject the reference and maintain the conviction and sentence. Let the record be returned.

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## MISCELLANEOUS CIVIL.

*Before Mr. Justice King.*

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PARSOTTAMANAND GIRI (PLAINTIFF) *v.* MAYANAND GIRI AND OTHERS (DEFENDANTS).*

*Court Fees Act (VII of 1870), section 7 (v); schedule II, article 17 (vi)—Suit for possession as mahant of properties attached to a* math—Ad valorem *court fee payable on properties other than temple which has no market value.*

In a suit for possession of immovable properties appertaining to a *math* brought by a person claiming to be the duly elected mahant an *ad valorem* fee is payable under section 7, clause (v) of the Court Fees Act upon the value of the properties of the *math*, excluding the temple itself as having no market value. This clause is applicable to suits for possession of immovable property, and no distinction is made between a suit for possession as a beneficial owner and a suit for possession as a trustee or as the manager of a religious endowment. The question whether the plaintiff who seeks possession has or has not any beneficial interest in the properties does not make any difference as regards the court fee payable by him. There is no justification for interpreting the word "possession" as meaning "possession as beneficial owner".

Mr. *A. Sanyal*, for the appellant.

Mr. *Gadadhar Prasad*, for the respondents.

KING, J.:—This is a reference under section 5 of the Court Fees Act. The plaintiff alleged that defendant No. 1, who was a mahant of a *math*, had lost his title to mahantship owing to his marriage, illegal transfers of properties and other wrongful acts, and that the plaintiff had been duly elected as mahant in his place. The plaintiff sued for possession as

*Stamp Reference in First Appeal No. of 1930