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EMPEROR
v.
SHADI.

The Assistant Government Advocate (Mr. W. K. Porter), in support of the order of the Magistrate, contended that the validity of the order passed by the Municipal Board could not be questioned except in manner provided by section 152 of the Municipalities Act. No appeal had been preferred against the order prohibiting the applicants from dealing with the land: the order was therefore final; and the only question was whether the applicants had disobeyed it. But in any case the applicants had built or erected huts upon land adjoining a public street — an act for which permission was necessary. No permission had been granted by the Board or even asked for. Permission had only been asked to *inclose* the land. The order of the Magistrate, therefore, in whichever way it was looked at, was a right order.

AIKMAN, J.—After perusing the reference made by the Additional Sessions Judge and hearing the learned Assistant Government Advocate in support of the conviction, I am of opinion that no cause is made out for interference in revision. Section 152 of the North-Western Provinces and Oudh Municipalities Act of 1900 shows that no prohibition, notice, or order under section 87 of the Act is liable to be called in question otherwise than by an appeal under section 152. It appears that the applicants erected huts abutting on a public street without having asked for permission to do so. The permission which was asked for, namely to inclose the land, was not a request for permission to erect huts. Let the record be returned.

Before Mr. Justice Aikman.

EMPEROR v. SHEO LAL AND ANOTHER.*

Act No. XLV of 1860 (Indian Penal Code), section 273—Sale of noxious food.

Before a person can be convicted under section 273 of the Indian Penal Code, it must be shown that the article which he has sold or exposed for sale was, to his knowledge or belief, noxious as food or drink.

In this case two persons, Sheo Lal and Prem Sukh, had been convicted by the Joint Magistrate of Bareilly, under section 273 of the Indian Penal Code, for exposing for sale some *ghi* which was bad. They appealed against this conviction to the Sessions

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* Criminal Reference No. 833 of 1903.

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Judge, who, holding that it was not shown that the *ghi* was "noxious" in the sense of being injurious to health, reported the case to the High Court, with the recommendation that the convictions and sentences should be set aside. In his order of reference the learned Sessions Judge said:—

"It is obvious from the evidence generally and also from chemical analysis that the *ghi* was not adulterated, but was, to quote the Chemical Examiner 'somewhat rancid.' The accused have been convicted under section 273. According to that section a man can only be convicted if he knows the article is 'noxious as food.' Now the word 'noxious' is often used as meaning 'nasty,' and in this popular sense of the word the *ghi* certainly was noxious, *i.e.* it was nasty. However, it seems to me that the word 'noxious' in the section (273) obviously has the original derivative (*sic*) meaning of the word (Latin *noceo*). I find it means 'injurious to health'. I am especially guided to this opinion by the heading of the chapter and the words 'public health.' Now the Civil Surgeon refused to say that the *ghi* was injurious to health—not only so, but he went further and expressed a guarded opinion that probably it was *not* injurious to health "

Babu *Sital Prasad Ghosh*, in support of the reference.

AIKMAN, J.—In this case a rule was issued by a Judge of this Court calling upon the District Magistrate of Bareilly to show cause why the convictions of Sheo Lal and Prem Sukh under section 273, Indian Penal Code, should not be set aside. No cause is shown. After perusal of the referring order of the learned Sessions Judge and the Magistrate's explanation, I am of opinion that the convictions of the applicants must be quashed. The section is somewhat peculiarly worded. But it appears to me that before a person can be convicted thereunder it must be shown that the article which he has sold or exposed for sale was, to his knowledge or belief, noxious as food or drink. This has not been shown in the present case. I set aside the convictions and sentences of fine passed thereupon and direct that the fines, if paid, be refunded.