

REVISIONAL CRIMINAL.

1904
February 23.

Before Mr. Justice Aikman.

EMPEROR v. SHADI AND OTHERS.*

*Act No. 1 of 1900 (N.-W. P. and Oudh Municipalities Act), section 152—
Order of Municipal Board under section 87 for removal of building
erected without permission—Disobedience to order—Finality of order.*

No prohibition, notice or order, issued by a Municipal Board under section 87 of N.-W. P. and Oudh Municipalities Act, 1900, is liable to be called in question otherwise than by means of an appeal under section 152 of the Act.

THE facts of this case are as follows:—

Three separate applications were made to the Municipal Board of Sikandra Rao in the district of Aligarh for permission to inclose a certain plot of land. Permission was at first given to one of the applicants; but afterwards this order was cancelled, and all the parties were prohibited from making any construction on the land until the title thereto had been decided by a Civil Court. After this order had been passed, some of the applicants erected certain huts on the land in question. This having been brought to the notice of the Municipal Board an order was issued by the Board calling upon the applicants to remove the huts which they had erected. A petition was presented to the District Magistrate asking for cancellation of this order; but it was rejected. The order, nevertheless, was not obeyed, and the applicants were accordingly prosecuted under section 147 of the Municipalities Act, 1900, and fined Rs. 8 each. The applicants appealed to the District Magistrate, who called for a report from the convicting Magistrate, as the result of which he found that the huts built adjoined a public street, and, as the permission of the Board was necessary under section 87(a) of the Act and no such permission had been obtained, upheld the convictions, though reducing the fines. An application in revision was then presented to the Additional Sessions Judge, who, being of opinion that the order of the Municipal Board prohibiting the applicants from building was *ultra vires*, reported the case to the High Court, recommending that the convictions and sentences should be set aside.

* Criminal Reference No. 88 of 1904.

1904

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

1904

February 23.

* Criminal Reference No. 833 of 1903.