

1910

BOHRA
THAKUR DAS
?.
COLLECTOR OF
ALIGARH.

of even date in second appeal 298 of 1904, should be discharged, and in lieu thereof it should be ordered that the accounts between the parties should be taken on the lines laid down by the District Judge in partial modification of the order of the court of first instance. And their Lordships will humbly advise His Majesty accordingly.

Their Lordships think that, in the circumstances, the parties should bear their respective costs before this Board and in the High Court.

Appeal 43 dismissed.

Appeal 44 allowed.

Solicitors for the appellant :—*Barrow, Rogers and Nevill.*

Solicitor for the respondent—The Collector of Aligarh :—

The Solicitor, India Office.

J. V. W.

1910.
May 25.

REVISIONAL CRIMINAL.

Before Mr. Justice Karamat Husain and Mr. Justice Chhimer.

EMPEROR v. BALDEO PRASAD,*

Act (Local) No. 1 of 1909, (United Provinces Municipalities Act), section 147—Municipal Board—Jurisdiction—Prosecution in respect of matter concerning which a civil suit was pending.

The plaintiff in a suit against a Municipal Board was permitted by the court to erect certain structures as specified in the decree of the court. Subsequently a dispute arose as to whether the structures which the plaintiff had erected were within or in excess of the powers given to him by the decree, and the Court decided, and the Board did not contest its decision, that the plaintiff had exceeded his rights under the decree, and that some portion of the said structures must be demolished. The Board meanwhile took action against the plaintiff under section 147 of the United Provinces Municipalities Act, 1900. *Held* that it was not open to the Board to prosecute the plaintiff in respect of the structures, pending the decision of the Civil Court and to continue the prosecution after its decision.

THE facts of this case were as follows :—

One Baldeo Prasad brought a suit against the Etawah Municipality, and in the appellate court a decree was given under which the Municipal Board had to make certain constructions, and in default of their doing so, the applicant was to make them and recover the cost from the Board. The Board failed to

* Criminal Reference No. 186 of 1910.

comply with the decree, and the appellant then made certain constructions, ostensibly in compliance with the decree, and was allowed Rs. 37-8-0 costs from the Board. There was, however, a dispute as to whether the plaintiff had not exceeded the powers given to him by the decree, and the Court ordered that a portion of the constructions should be dismantled, and against this order the Board did not appeal. Meanwhile the Municipality prosecuted the applicant on the ground that the erections were made without the permission of the Board. A bench of Magistrates convicted the petitioner under section 147 of Act I of 1900 and the conviction was upheld by the District Magistrate. The petitioner then applied in revision to the Sessions Judge, who referred the case to the High Court with a recommendation that the conviction should be set aside on the ground that the Municipal Board could not convict the petitioner for having made constructions under the decree of a Civil Court.

The Assistant Government Advocate (Mr. R. Malcomson) in support of the conviction.

KARAMAT HUSAIN and CHAMIER J.J.—This is a reference by the Sessions Judge of Mainpuri in which he recommends that the conviction of Baldeo Prasad under section 147 of the United Provinces Municipalities Act should be set aside. The facts, which are somewhat peculiar, are as follows:—In a civil suit between Baldeo Prasad as plaintiff and the Municipal Board of Etawah as defendant, it was decided by the District Judge on appeal that Baldeo Prasad was not entitled to close a certain drain in front of his house; but that he might have the platform in front of his house connected with the public road by means of a stair-case. The decree directed the Municipal Board to erect the stair case within two months; in default Baldeo Prasad was entitled to erect it himself and recover the cost of doing so from the Municipal Board. The Municipal Board took action, which they said complied with the decree. But Baldeo Prasad contended that the Board had not complied with the decree and he proceeded to enlarge the stair case which the Board had built and to cover a large part of the drain along the front of the house and also to erect what has been described as a vertical buttress in front of his house projecting a foot or more from the

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original front of the building. Having done this he applied to the Civil Court for the cost incurred by him. An amin was sent to the spot and reported that the constructions were in some respects in accordance with and in other respects contrary to the decree of the Civil Court. The District Magistrate says that the amin's report is flagrantly contrary to facts; but, however that may be, the report was laid before the Subordinate Judge and he decided that some of the constructions should be removed and that the rest might stand. The Municipal Board have not appealed against this decision. But while these proceedings were going on the Municipal Board by a resolution required Baldeo Prasad to dismantle the buttress and certain portions of the stair-case erected by him. The resolution is not on the record nor is the Board's subsequent order to Baldeo Prasad requiring him to dismantle the buttress and portions of the staircase. But we may assume for the purpose of this case that the proceedings of the Board were so far in order. The question is whether it is open to the Municipal Board to prosecute Baldeo Prasad in respect of the buttress and the stair-case pending the decision of the dispute by the Civil Court and to continue the prosecution after the Civil Court decided the matter in favour of Baldeo Prasad. It seems to us that inasmuch as the Board were parties to the execution proceedings they should have appealed against the Subordinate Judge's order if they considered that it was erroneous. It seems clear that the provisions of the Municipal Act were not intended to enable Municipal authorities to override the decision of a competent Civil Court in a matter of this kind by means of a criminal prosecution. We set aside the conviction of Baldeo Prasad and direct that fine if paid, be refunded.

Conviction set aside.