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BISHESHAR  
DAYAL  
v.  
JWALA  
PRASAD.

resold and accordingly the defence on this ground cannot be sustained.

The result is that we allow the appeal, set aside the decree of the lower appellate court, and restore the decree of the court of first instance with costs.

*Appeal allowed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Chamier.*

SITAL PRASAD v. THE MUNICIPAL BOARD OF CAWNPORE\*.

*Act (Local) No. I of 1900 (United Provinces Municipalities Act), section 147—  
Conviction for disobedience to notice—Continuing breach.*

After a conviction under section 147 of the United Provinces Municipalities Act the person convicted cannot be permitted to challenge the correctness of that conviction as often as he is prosecuted for continued disobedience of the order of the board.

In this case one Sital Prasad was ordered by the Municipal Board of Cawnpore to pull down a *chajja* which was alleged to be in a ruinous and dangerous condition. On his disobeying the order he was prosecuted under section 147 of the Municipalities Act and was fined Rs. 5. As he persisted in disobeying the Board's order he was prosecuted again and was fined Rs. 20 at the rate of Rs. 2 for each day that elapsed since the original conviction. At the second trial he wished to challenge the correctness of the first conviction by showing that the Board's notice was illegal and so forth. The Magistrate refused to allow this to be done. Sital Prasad then applied in revision to the High Court.

Mr. A. P. Dube, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson) for the Crown.

CHAMIER, J.—The applicant was ordered by the Municipal Board of Cawnpore to pull down a *chajja* which was alleged to be in a ruinous and dangerous condition. On his disobeying the order he was prosecuted under section 147 of the Municipalities Act and was fined Rs. 5. As he persisted in disobeying the Board's order he has been prosecuted again and he has been fined Rs. 20 at the

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Criminal Revision No. 223 of 1914 from an order of H. G. S. Tyler, District Magistrate of Cawnpore, dated the 5th of February, 1914.

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rate of Rs. 2 for each day that elapsed since the original conviction. At the second trial he wished to challenge the correctness of the first conviction by showing that the Board's notice was illegal and so forth. The Magistrate refused to allow this to be done, and in my opinion the view taken by the Magistrate is correct. Before the institution of the second prosecution the applicant challenged the correctness of the first conviction by means of applications to the District Magistrate and to this Court, but his applications were thrown out. It seems to me impossible to hold that after a conviction under section 147 the person convicted may challenge the correctness of that conviction as often as he is prosecuted for continued disobedience of the order of the Board. The correctness of the first conviction cannot now be challenged.

This application for revision is dismissed.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

ALI HUSAIN AND OTHERS (DEFENDANTS) v. FAZAL  
HUSAIN KHAN (PLAINTIFF).\*

*Muhammadian law—Shia school—Waqf—Marz-ul-maut—Validity of waqf made in marz-ul-maut.*

Under the Shia law a waqf made in death-illness is valid only to the extent of one third if not assented to by the heirs, even if possession has been delivered by the maker of the waqf. *Nazar Husain v. Rafiq Husain* (1) approved.

THE facts of this case were as follows:—

One Gazanfar Husain died on the 13th of May, 1907, having, two days before his death, namely, on the 11th of May, made a waqf of certain property and placed the trustees in possession. The present suit was brought by Fazal Husain Khan, who claimed to be the heir of Gazanfar Husain, and also of one Azima Bibi, aunt of Gazanfar Husain, to whom it was alleged that part of the waqf property belonged, and he claimed possession upon the ground that the waqf was invalid according to the Muhammadian law applicable to the Shia sect, to which the deceased belonged.

\* First Appeal No. 308 of 1911, from a decree of J. H. Cuming, District Judge of Jaunpur, dated the 23rd of May 1911;

(1) (1911) 8 A. L. J., 1154.

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SITAL  
PRASAD  
v.  
THE  
MUNICIPAL  
BOARD OF  
CANNONPORT.

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