

that an appeal lay to the District Judge. However in the case of *Udit Tiwari v. Bihari Pande* (1) a contrary view was taken, although the facts were identical. The learned Judges say "We cannot see that the defendant's title as proprietor was ever denied by the plaintiff. Certainly the latter never claimed to be himself the proprietor of the land in dispute, or to have any right in the same, other than the right of an occupancy tenant." It is true, in the present case, the plaintiff did not claim to be proprietor, and the question whether the plaintiff or the defendant was the proprietor did not arise; but section 177 provides for an appeal to the District Judge when any question of proprietary title has been and is in issue. The plaintiff denied that the defendant was entitled to possession as proprietor, though he did not deny that he was a co-sharer. The importance of the case is to have a settled practice. We think that the language of the clause is wide enough to include a case like the present where one party claims actual possession as proprietor and the other side disputes such claim and that under the circumstances an appeal lay to the District Judge under section 177, clause (e), of the Tenancy Act. We accordingly direct that the memorandum of appeal be returned by the Commissioner and the same be received by the District Judge, who shall proceed to hear and determine the same according to law.

This is our answer to the reference. The costs of this reference will abide the result.

Memorandum of appeal returned.

REVISIONAL CRIMINAL.

Before Mr. Justice Ryves and Mr. Justice Piggott.

EMPEROR v. PIARI LAL.*

*Act (Local) No. I of 1900 (United Provinces Municipalities Act), section 147—
Prosecution for disobedience to notice—Validity of the notice to be considered.*

Before anyone can be convicted of an offence under section 147 of the United Provinces Municipalities Act the court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act.

* Criminal Reference No. 1231 of 1913.

(2) (1913) I. L. R., 35 All., 521.

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EMPEROR
v.
PIARI LAL.

Chhotey v. Municipal Board of Lucknow (1) approved. *Queen-Empress v. Jasoda Nand* (2) referred to.

THE facts of this case were as follows :—

A written notice was served on one Piari Lal by the Municipal Board of Cawnpore ordering him to pull down a *chhajja* recently built by him on the eastern side of his house and also to demolish a *do-manzila* on the western side within one week. He did not do so, and was charged in consequence under section 147 of the Municipalities Act (Act I of 1900). He admitted receipt of this notice, but stated that he had not constructed any building without permission, but that he had made ordinary repairs. No further evidence was tendered on behalf of the prosecution. The Bench trying the case held that no offence had been proved against the accused and discharged him. The District Magistrate moved this Court suggesting that the validity of the notice issued by the Board was one which could only be questioned under section 152 of the Municipalities Act, and that, as it had not been so questioned, it was not open to the accused to attack its validity in a Criminal Court in defence of a charge under section 147.

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

The opposite party was not represented.

RYVES and PIGGOTT, JJ :—This is a reference by the District Magistrate of Cawnpore under the following circumstances:—A written notice was served on one Piari Lal by the Municipal Board of Cawnpore ordering him to pull down a *chhajja* recently built by him on the eastern side of his house and also to demolish a *do-manzila* on the western side within one week. He did not do so, and was charged in consequence under section 147 of the Municipalities Act (Act I of 1900). He admitted receipt of this notice, but stated that he had not constructed any building without permission, but that he had made ordinary repairs. No further evidence was tendered on behalf of the prosecution. The Bench trying the case held that no offence had been proved against the accused and discharged him. The District Magistrate moved this Court suggesting that the validity of the notice issued by the Board was one which could only be questioned under

(1) (1905) 9 Oudh Cases, 29.

(2) (1898) I. L. R., 20 All., 501.

section 152 of the Municipalities Act, and that, not having been so questioned, it was not open to the accused to attack its validity in a Criminal Court in defence of a charge under section 147. What he was exactly charged with in this case was disobedience of a written notice lawfully issued by the Municipal Board under the powers conferred upon it by Chapter VII of the Act. It seems to us that before anyone can be convicted of an offence under this section the court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act. This was held in *Chhotey v. The Municipal Board of Lucknow* (1) by one of us. It seems also to be in conformity with the principle laid down by a Bench of this Court in *Queen-Empress v. Jasoda Nand* (2). Let the papers be returned.

[See also *Emperor v. Ram Dayal*, (1910) I. L. R., 33 All., 147. Ed.]

PRIVY COUNCIL.

BRIJ LAL (DEFENDANT) v. INDA KUNWAR (PLAINTIFF).

[On appeal from the High Court of Judicature for the North-Western Provinces, at Allahabad.]

Hindu law—Alienation by Hindu widow—Burden of proof—Evidence of legal necessity—Recitals as to evidence of necessity in mortgages or sale-deeds.

The *onus* of supporting a sale from a Hindu widow is on the purchaser.

Recitals in mortgages or deeds of sale with regard to the existence of legal necessity for an alienation by a Hindu widow are not of themselves evidence of such necessity without substantiation by evidence *aliunde*.

APPEAL from three judgements and decrees (two of them, dated the 23rd of December, 1909, and the third dated the 8th of March, 1910) of the High Court at Allahabad, which partly affirmed and partly reversed two judgements and decrees (dated the 27th of November, 1907, and the 13th of December, 1907) of the Subordinate Judge of Bareilly.

This appeal arose out of two suits (62 and 63 of 1907) instituted against the appellant and others. The former of them was brought on the 18th of April, 1907, by the respondent Inda Kunwar to recover possession of a 10 biswa share of a zamindari village

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7, 11, 12, 13,
1914
February, 6.

* Present :— Lord SNOW, Lord MOULTON and Mr. AMEER ALI.

(1) (1905) 9 Oudh Cases, 29.

(2) (1898) I. L. R., 20 All., 501.