

section 10, and the conviction for illicit sale is bad. On the other hand, it is clear that on the facts proved the petitioner might have been convicted of the unlawful transport of opium. We do not, therefore, consider it necessary to interfere in revision, and the rule is discharged.

1910  
ISHWAR  
CHANDRA  
SINGH  
v.  
EMPEROR.

*Rule discharged.*

E. H. M.

## CRIMINAL REVISION.

*Before Mr. Justice Carnuff and Mr. Justice Richardson.*

KISSORI LAL JAINI

v.

THE CORPORATION OF CALCUTTA.\*

1910  
March 30.

*Demolition of building—Calcutta Municipal Act (Beng. Act III of 1899) ss. 18, 102 (1) (c), 391, 449—Sanction by District Building Surveyor of additions to contemplated building—Delegation of power by Chairman—Legality of sanction—Sanction of General Committee—Proceeding under s. 449—Application thereunder to Magistrate, signed for the Chairman by the Secretary to the Corporation and the General Committee—Irregularity.*

An addition to a contemplated building sanctioned by a District Building Surveyor, to whom the power of sanction has been delegated by the Chairman under s. 18 of the Calcutta Municipal Act, 1899, is a duly authorized erection, and the sanction of the General Committee under s. 391 is not necessary.

Section 391 applies only to alterations of, and additions to, existing buildings.

Where the General Committee approved of the suggestion of the Building Sub-Committee that certain additions to a building were unauthorized, and that an application should be made to the Magistrate under section 449 of the Act, and directed the Chairman to make it, whereupon an application was made, purporting to come from the Chairman but signed by the Secretary to the Corporation, who was also Secretary to the General Committee:—

*Held*, that the irregularity, if any, was cured by section 102 (1) (c) of the Act.

On 9th December 1907, the petitioner applied to the Chairman of the Calcutta Corporation for sanction to build a three-

\* Criminal Revision No. 165 of 1910, against the order of Amrita Lal Mukerjee, Municipal Magistrate of Calcutta, dated Dec. 23, 1909.

1910  
 KISSORI LAL  
 JAINI  
 v.  
 THE CORPO-  
 RATION OF  
 CALCUTTA.

storied house on the premises No. 22, Darmahatta Street, and submitted a plan thereof, which was returned, and the sanction refused, on the 1st February 1908, on certain grounds. He sent in a modified plan on the 5th, and one Nogendra Nath Ganguli, a District Building Surveyor of the Corporation, sanctioned the building, as a delegate of the Chairman, on the 31st March. On the 6th May the petitioner applied to the Chairman for sanction to certain additions to the building, *viz.*, a three-storied verandah with stairs and a cook-room on the fourth storey, enclosing a plan of the same. The sanction was ultimately accorded purporting to be granted under section 391 (2) of the Calcutta Municipal Act, by N. C. Bose, a District Building Surveyor of the Corporation, acting as a delegate of the Chairman, on 6th August. The building was subsequently commenced and completed on the 2nd December. A week after a notice was served on the petitioner by the Chairman requiring him to bring his building into conformity with the sanctioned plan. Thereafter, N. C. Bose submitted the case to the Building Sub-Committee, alleging that the sanction was obtained under a false pretence by showing on the plan an open plot of land belonging to the adjoining premises as a common passage, and that rules 17, 22 and 24 of Schedule XVII had not been observed. The Building Sub-Committee recommended an application to the Magistrate under section 449 of the Act, and the General Committee confirmed their recommendation, on the 19th March 1909, and directed the Chairman to make it on its behalf. On the 25th March a written application, purporting to come from the President of the General Committee and the Chairman, and signed by Babu P. N. Mukherjee, the Secretary to the Corporation and the General Committee, was made to the Municipal Magistrate, under section 449, for demolition of the unauthorized portions of the building. Proceedings under the section were then instituted before the Magistrate, and he, by his order dated the 23rd December, directed the demolition of the objectionable portions.

The petitioner then moved the High Court and obtained the present rule.

*Dr. Rashbehary Ghose and Babu Mohini Mohan Chatterjee,*  
for the petitioner.

*Mr. Stokes and Babu Debendra Chandra Mallik,* for the  
Corporation.

1910  
KISSORI LAL  
JAINI  
v.  
THE CORPO-  
RATION OF  
CALCUTTA.

CARNDUFF AND RICHARDSON, JJ. This is a rule to show cause why an order passed by the Municipal Magistrate for the demolition of a building in Calcutta should not be set aside on two grounds, namely, *first*, because the Secretary to the Corporation had no power to make the application which ended in the order complained of ; and, *secondly*, because the building in question had been duly sanctioned.

Taking the second ground first, we find that in the month of August 1908, sanction was accorded by the District Surveyor, under powers delegated to him by the Chairman, to the erection of a certain building. Subsequently another application was made for sanction to an addition to the building as originally proposed, and this likewise was granted by the District Surveyor. No building operations of any kind were begun till after the second application had been disposed of. The contention of Mr. Stokes on behalf of the Municipality is that the District Surveyor had no authority to grant the second sanction, inasmuch as the case was one of sanction to an addition to a building falling under section 391 of the Calcutta Municipal Act, and, therefore, the only authority by which the sanction could have been granted, was the General Committee. But it seems to us to be perfectly clear that section 391 of the Act applies only to alterations of, and additions to, existing buildings, and that it is impossible to accept the contention that a supplementary application, proposing an addition to an already sanctioned plan of a contemplated building, can be held to fall within its scope. We think, then, that the additional erection, which was made on the strength of the District Surveyor's approval, was duly sanctioned, and that on this ground the rule must be made absolute.

The second point is that the Secretary to the Corporation, who is, be it remembered, also Secretary to the General

1910  
 KISSORI LAL  
 JAINI  
 v.  
 THE CORPO-  
 RATION OF  
 CALCUTTA.

Committee, had no power to make the application to the Magistrate. As we have disposed of the rule on the other ground, it is unnecessary for us to say more than that we are inclined to think that, if there was any defect or irregularity in this connection, it is covered by section 102 (1) (c) of the Act, which provides that "no act done or proceeding taken under the Act shall be questioned on the ground merely of any defect or irregularity not affecting the merits of the case." Dr. Rashbehary Ghose, who has appeared on behalf of the petitioner, admits that there can be no question as to the General Committee's having expressly approved of the making of an application under section 449. Admittedly, therefore, the fact remains that the application was made in pursuance of the wishes of the General Committee, and, if the presentation of it by the Secretary to that Committee was not strictly in accordance with the requirements of the Act, we cannot, at the moment, think of a more appropriate case for the application of section 102.

The rule is made absolute, and the order is set aside.

*Rule absolute.*

E. H. M.