## APPELLATE CIVIL.

*Before Mr. Justice Phillips and Mr. Justice Reilly.*

1929, February 1.

THE CORPORATION OF MADRAS (DEFENDANT), APPELLANT,

*v.*

MESSRS. SPENCER & CO., LTD., MOUNT ROAD, MADRAS (PLAINTIFF), RESPONDENT.*

*The Madras City Municipal Act (IV of 1919), sec. 287—If licence fee could be imposed under, for purposes of taxation—If must be reasonable—Fixing amount of fee—If Court can assume power conferred on Corporation—Licence fee for storing foreign liquor raised from Rs. 25 to Rs. 200—Expenses of supervising practically* nil*—Enhanced fee if unreasonable.*

A licence fee imposed by the Corporation of Madras under section 287 of the Madras City Municipal Act cannot be imposed for the purpose of taxation. It must be a reasonable fee. The Court will not take upon itself the power conferred by statute on the Corporation to fix the amount of the fee.

Where the Corporation of Madras raised the licence fee for storing foreign liquor from Rs. 25 to Rs. 200, and it appeared on the evidence that the expenses of supervising the places where the foreign liquor was stored, were practically *nil, held,* that the levy of the enhanced fee was unreasonable.

*Kruse* v. *Johnson,* [1898] 2 Q.B., 91; *Municipal Corporation of Rangoon* v. *The Soorattee Bara Bazaar Co., Ltd.* (1927) I.L.R., 5 Rang., 212, followed; *Institute of Patent Agents* v. *Lockwood,* [1894] A.C., 347, referred to.

ON APPEAL from the Judgment of Mr. Justice BEASLEY, dated the 15th day of April 1928, and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in C.S. No. 197 of 1927.

The plaintiff company stored spirits at a number of places in the City of Madras. By section 287 of the Madras City

* Original Side Appeal No. 71 of 1928.

Municipal Act, it is provided that (1) the owner or occupier of every place used for any purpose specified in Schedule VI shall in the first month of every year or, in the case of a place to be newly opened, before it is opened, apply to the Commissioner for a licence for the use of such place for such purpose; (2) the Commissioner may by an order and under such restrictions and regulations as he thinks fit grant or refuse to grant such licences; and (3) no person shall otherwise than in conformity with such a licence, use any place for such purpose. One of the purposes set out in Schedule VI is the storing of spirits. Previous to the 15th December 1925, the licence fee was Rs. 25, but on the 15th December a resolution was carried at a meeting of the Corporation whereby the licence fee was raised to Rs. 150 and on the 9th March 1926 at a General Meeting of the Council, a resolution that the licence fee should be enhanced from Rs. 150 to Rs. 200 was carried, and a licence fee of Rs. 200 was imposed in respect of every place in which spirits were stored by the plaintiff company. The plaintiff company repudiated their liability, but paid the fee under protest, and filed a suit for the recovery of the amount collected from them. The learned trial Judge held "that the plaintiffs are not entitled to a declaration that they are not liable to pay any licence fee but they are entitled to a declaration that the licence fee of Rs. 200 in respect of each of their premises is unreasonable and unauthorized taxation, and they are therefore liable only to pay a licence fee of Rs. 25, which is the sum which on the evidence I consider is amply sufficient to cover all the duties performed and the expenses incurred by the defendant-Corporation with respect to these licensed premises and other premises in respect of which similar licences have been granted."

*S. Rangaswami Ayyangar* for appellant.—There is no distinction between a tax and a licence fee, in Indian Municipal Acts, and there is no restriction on a local authority prohibiting the exercise of the power to levy a licence fee for the purpose of raising revenue. The intention of the legislature as gathered from the successive enactments relating to the Corporation of Madras has been to gradually do away with the limitations on the exercise of such a power, and under the Act now in force the power is absolute. Section 110: companies tax is treated as a licence fee and is payable in addition to any other licence fee that may be leviable. Section 111 deals similarly with profession tax. Section 130: tolls are not levied on vehicles licensed or registered. Section

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139: all moneys received by the Corporation constitute the Municipal fund, and that includes fees levied under section 365. The levy is neither under part III nor part IV, but under part VI which deals with procedure and miscellaneous matters.

A Court of law is not competent to go into the reasonableness or otherwise of the levy. If in any particular case the fee is said to be unreasonable, the Corporation alone can give relief. See *Institute of Patent Agents* v. *Lockwood*(1), observations of Lord Herschell, pp. 353-355. As to what is reasonable or unreasonable, See *Kruse* v. *Johnson*(2). The expenses connected with each trade cannot be separately ascertained and the licence fee cannot be based upon expenses relating to each trade separately. The amount of the fee is in the discretion of the licensing authority, Dillon's Law of Municipal Corporation, Vol. II, p. 1021.

The increase in this case may be sudden, but having regard to the entire expenditure incurred in connection with the licensing department, and the fee levied in other cities such as Calcutta, the present assessment cannot be said to be unreasonably high.

*Vere Mockett* (*O. T. Govindan Nambiar* with him) for respondent.—The Rangoon case, *Municipal Corporation of Rangoon* v. *The Sooratee Bara Bazaar Co., Ltd.*(3) decides both that a Court of law has jurisdiction to go into this matter and that the licence fee levied should bear some reasonable relation to the work involved in supervising the licensed premises. In the present case the power conferred on the local authority has been most unreasonably exercised. The fee was increased from Rs. 25 to Rs. 200 in the course of three months. There has been no increase in the work of supervising. The present levy is manifestly unjust and partial throwing an unduly heavy burden on one class of trade.

## JUDGMENT.

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PHILLIPS, J.—The only question for determination in this appeal is whether the action of the appellant, the Madras Corporation, in raising the licence fee for storing spirits from Rs. 25 to Rs. 200 was within its

(1) [1894] A.C., 347. (2) [1898] 2 Q.B., 91 at 100.
(3) (1927) I.L.R., 5 Rang., 212.

powers. BEASLEY, J., who tried the case has held that the increase in the fee is unreasonable within the meaning of the term as defined by Lord RUSSELL, C.J., in *Kruse* v. *Johnson*(1), and has directed refund to the plaintiffs, Messrs. Spencer & Co., of the excess amount paid by them. Mr. Rangaswami Ayyangar for the appellant now takes exception to this finding and says that the power to levy fees for licences under the Madras Act IV of 1919 is conferred on the Council and it is within their power to fix the fee at any figure they please. He contends that if they fixed it at a figure too high or too low, the tax-payer has two remedies, (1) by exercising pressure on the member of the Corporation for his ward with a view to getting the figures altered, and (2) the correction of its own mistake by the Council; but he was not at first prepared to accept the dictum in *Kruse* v. *Johnson*(1), that the Court has power to interfere with by-laws which are unreasonable. The definition given of "unreasonable" at page 99 of the report of that case is as follows:—

"If, for instance, they (i.e., the by-laws) were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men. . . ."

Appellant's contention in the first place is, that the fees fixed for licences for what are called dangerous and offensive trades which are leviable under the provisions of the Act are revenue in the same sense as the taxes which the Council is empowered to levy. When there is a question of what is the power of taxation conferred by Government on a public body, a very careful scrutiny is necessary to see that only powers specially conferred

(1) [1898] 2 Q.B., 91.

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are exercised and that nothing further is added to them. In Part III of the Act which purports to deal with Taxation and Finance, Chapter V deals with Taxation, and enumerates the several taxes which the Council is empowered to levy. Licences are dealt with in Part IV of the Act and are leviable under section 287. The power to levy fees for licences is given in the chapter on Procedure. There can be little doubt that there is a great difference between taxes and licence fees. The fact that in sections 110 and 111 the levying of taxes is authorized but is stated to be by way of licence fee does to some extent support the argument that taxes and licence fees have something in common, but that a tax is not the same as a licence fee, is clear from the fact that no permission has to be obtained before the tax becomes payable and the tax is not paid for such permission, whereas the licence fee is payable in respect of a permission which is granted by the Corporation. I must confess that the words " by way of licence fee " in sections 110 and 111 are not very intelligible to me and I cannot think that the sections would be affected in any way by the omission of these words. Presumably the Legislature intended to attach some meaning to these words, but nothing has been suggested in the course of these proceedings in explanation of the meaning. Whatever may be the meaning, I am satisfied that taxes cannot be treated as being in the same category as licence fees under the Act. The argument, therefore, that, when the Corporation is empowered to levy licence fees, it may do so solely for the purpose of revenue does not seem to me to be tenable. BEASLEY, J., has held that fees are leviable as compensation to the Corporation for the expenses incurred in the issue of licences and the general regulation of the trades and other occupations which are licensed and that there must be some relation between

these expenses and the amount of fees leviable. This was the view which was adopted by the Rangoon High Court in *Municipal Corporation of Rangoon* v. *The Sooratee Bara Bazaar Co., Ltd.*(1). With all respect, I think this is a very reasonable view to take, and, although possibly the above is not the sole consideration which may be taken into account in fixing the amount of fee, it is the main consideration. The licence fees are in respect of what are called dangerous and offensive trades, that is to say, it is necessary in the interests of the City that the Corporation shall know where such trades are being carried on, and shall be in a position to see that they are carried on in a proper manner without causing unnecessary nuisance to other people or danger to the public generally. That being so, it is clear that the Corporation must have power to raise money for the exercise of these powers, but it does not follow that the Corporation has the power to levy any sum it likes by way of licence fee in order to raise the revenue, and in fact it is conceded by Mr. Rangaswami Ayyangar that there must be some limit to the fee which can be imposed; but he is not prepared to suggest what that limit will be. If there is such a limit, there is good reason for holding in accordance with the principle of *Kruse* v. *Johnson*(2) that, if the fee is unreasonable within the meaning of Lord RUSSELL's definition in that case, the Court has power to interfere with its levy. We have been referred to another case, *Institute of Patent Agents* v. *Lockwood*(3), in which Lord HERSCHELL, when dealing with the rules framed by the Board of Trade under the Patents, Designs, and Trade Marks Act, 1888, which fixed a certain fee, in the course of his judgment observed, at page 355,

(1) (1927) I.L.R., 5 Rang., 212. (2) [1898] 2 Q.B., 91.
(3) [1894] A.C., 347.

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"I confess that it seems to me, if there were any power to impose fees at all, very difficult indeed to arrive at the conclusion, when the Board of Trade have sanctioned a particular fee, that it is within the province of a Court of law to canvass their conclusion, and to determine what is the legitimate amount at which the fee may be fixed."

If that remark is applicable to the present circumstances, it would follow that, as the Council has power to fix the fee, it is not within the province of this Court to interfere, but there is a subsequent remark at page 357, namely,

"I will say one word, however, before leaving this part of the subject, upon the point suggested, that they involved something harsh or unfair as regards the respondent. . . "

It is not unreasonable to interpret that as showing that the learned Judge had the principle laid down in *Kruse* v. *Johnson*(1) in his mind, namely, that if there was something harsh or unfair in the rules, it may be that the Court will interfere. The case is certainly no authority to the contrary and was not even cited in *Kruse* v. *Johnson*.(1). The question, therefore, before us is whether BEASLEY, J., was right in holding that the levy of this fee was unreasonable. Apparently from 1904 to 1924 the fee of Rs. 25 was fixed as the fee for storing spirits. Until that date, the word "spirits" was interpreted as denatured spirits and the fee was levied for the storage of such spirits. In 1924 and 1925, the licence in its present form was granted for a fee of Rs. 25. At the end of 1925, a proposal was made to raise it, and we have the minutes of the proceedings of the Council from the 15th of December 1925 to 9th of March 1926 when the Council finally fixed the fee at Rs. 200, changing the nature of the licence to one for arrack and for foreign liquors containing alcohol. From the notes of the then Commissioner, it would appear that the Corporation

(1) [1898] 2 Q.B., 91.

resented the action of Government in collecting the abkāri revenue within the City and in not allowing the Corporation to utilize such revenue for themselves. As compensation, the Government were paying a fixed sum annually to the Corporation. The Commissioner suggested that, as the Government insisted on the old conditions being adhered to, the power to levy a fee for storing spirits should be fully exploited and raised. Accordingly, the fee was raised from Rs. 25 to Rs. 200. Can it be said that this alteration was made reasonably? Taking it that the fee income must be more or less proportionate to the trouble and expense incurred by the Corporation in issuing licences and in controlling trades and other matters for which licences are issued, the reason at the bottom of the resolution of the Council is clearly not in accordance with the spirit of the Act. The fee was not raised because of the expense of collection or regulation, but was merely a counter demonstration to the order of Government refusing to allow the Corporation to take the abkāri revenue of the City. The result of this increase of fee has undoubtedly been to impose on the persons who store such liquor a very unfair burden as compared with other tax-payers in the City. From the evidence which has been adduced, it would appear that the expenses of supervising the places where foreign liquor is stored are practically *nil*. The site is inspected when the licence is originally granted and, so far as the evidence goes, no further action appears to be taken. If we compare the fee for this licence with the fees for other matters which entail much greater expense and trouble on the Corporation, such as fees for stables, dairies and storing skins and explosives, we find that the fee for storing spirits is by far the highest, although those other matters entail much greater trouble and are more dangerous and offensive to the general public. The

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fee for other licences was not raised at the same time, and consequently it is impossible to hold that there was justification for raising the fee for a licence for storing spirits by 800 per cent. It was certainly not done with a view to pay for the expenses in connection with such licences, but was obviously done to increase the revenue of the Corporation from liquor, thereby replacing the abkāri revenue taken by Government. This being so, I must find that BEASLEY, J., was amply justified in finding that the levy of the enhanced fee was unreasonable.

While holding that the enhanced licence fee is unreasonable, the learned Judge has in his decree ordered that "the plaintiffs are therefore liable only to pay a licence fee of rupees twenty-five (Rs. 25) which sum is amply sufficient to cover all the duties performed and the expenses incurred by the defendant-Corporation with respect to those licensed premises and other premises in respect of which licences have been granted." While agreeing with him that the enhanced fee is excessive, I do not think that the Court is justified in taking upon itself the power conferred by the Act upon the Council, namely, the fixing of the amount of fees. In this case the omission to fix the fee for a licence will make no difference in the substance of the decree, for the fee which was formerly leviable was Rs. 25 and this figure must be restored, as the resolution for its enhancement is invalid, and the plaintiffs are therefore entitled to the refund of the balance of Rs. 175. The words of the decree quoted above should therefore be removed, but the decree is in other respects confirmed.

A somewhat surprising argument has also been advanced on the question of costs. The learned Judge has passed the usual order that costs should follow the

result, and the circumstances would have to be exceptional to justify our interference with the order. Not only must we be of opinion that there were circumstances which justified a departure from the usual order as to costs, but we must be further satisfied that those circumstances were so exceptional that the learned Judge cannot have exercised his discretion judicially in ignoring them. That is far from being the case here, and this ground of appeal must be rejected.

PHILLIPS, J.

The appeal is accordingly dismissed with costs.

REILLY, J.—I agree with the finding of the learned Judge on the Original Side that the power given by the Madras City Municipal Act to the Council to levy licence fees cannot be used as a power of taxation. The Act clearly provides in Part III for taxation, and lays down what taxes the Corporation may levy. Then the Act goes on to an entirely different part, Part IV, which is headed "Public Health, Safety and Convenience." In that Part, there are provisions to the effect that no person shall carry on certain trades or occupations or use any premises for certain purposes, without getting a licence from the Commissioner. The section in that Part, with which we are particularly concerned, is section 287, which provides that no person shall use any place for any of the specified purposes, without getting the permission of the Commissioner in the form of a licence. A person who wishes to use his premises for such purposes has to apply for a licence. The Commissioner may grant, or refuse to grant, such a licence. If he grants it, he may fix any conditions or restrictions which he thinks necessary. There is nothing whatever in this section about a person who wishes to use his premises for such a purpose being taxed, or his occupation or his premises being taxed. He has under those provisions to get a licence. When

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we come to the end of the Act, there is another part headed "Procedure and Miscellaneous." Section 365, at the beginning of that part, sets out that every licence or permission must be signed by the Commissioner and must specify the restrictions, if any, which are imposed by the Commissioner. Then sub-section (2) goes on to say "For every such licence or permission, fees may be charged at such rate as may be sanctioned by the Council." It is suggested that the fixing of fees for these licences may be used by the Council as a method of taxation. Surely, if that was intended, that power would have been provided for in the part of the Act which deals with taxation. What could be the reason for bringing it in as a mere matter of procedure at the end of the Act? Mr. Rangaswami Ayyangar for the Corporation has suggested that, because in the sections which deal with taxation one or two of them refer to the method of collecting taxes as "by way of licence fees," therefore we must hold that there is no distinction between licence fees and taxes. I can see no sufficient reason in the rather loose language which is used in those sections about the means of collecting taxes, to lead us to hold that under the Act it is intended that there should be no distinction between licence fees and taxes. I do not think that the matter really admits of any doubt. But, if there were any doubt about the meaning of section 365 (2), if it were possible to read that sub-section in two ways—in one way as empowering the Council to impose taxes on persons who apply for licences, and in another way as empowering them only to require those persons to pay fees—then under the ordinary principle of construction, when we are dealing with a statute which imposes or which it is contended imposes any liability on a subject or citizen to taxation, it would be imperative upon us to adopt the construction

most favourable to the subject or citizen. But I do not think it is necessary to call that principle of construction to our aid in this case. I cannot imagine that the Legislature, when providing for licence fees under the heading "Procedure" and omitting them from the provisions regarding taxation, ever intended them to be treated in any way as taxes.

If the power to levy these fees cannot be used for taxation, it is admitted that the Council has not the power to fix any arbitrary fee which it chooses. Mr. Rangaswami Ayyangar has admitted that there must be some limit to its power and that the fees must be reasonable. He has rightly contended that in interpreting the word "reasonable" in this connection we must give it a wide and liberal interpretation. And I quite agree with his contention that, when such a question comes before a Court, it is not for the Judge to try minutely to assess what is the proper fee; nor is it for the Judge to substitute his judgment in the matter for that of the public body to which the Legislature has entrusted it. But I think there are two principles which we may use to determine whether the fees fixed by a Municipal Corporation with powers such as these can be held to be reasonable or not. If we accept the proposition that the power of charging licence fees cannot be used for taxation, then we must say that as a whole the fees charged by the Corporation must not be very much in excess of what the duties cast upon them and their staff in connection with the licences cost them. There is the cost of issuing the licences; there is the cost of inspecting the premises to see whether they are suitable for the purpose proposed; and there is the subsequent cost of inspecting the premises to see that they are being used properly and that the conditions and restrictions imposed by the Commissioner are

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observed. But, roughly speaking, if the fees are charged at so high a rate that as a whole they bring in very much more than the cost of these operations to the Corporation, then I think we can rightly say that they are unreasonable. There is another principle. Although it is almost impossible for the Corporation itself to ascertain, when they are issuing a number of licences to persons engaged in different trades and occupations, exactly what is the cost of any particular licence or of licences for persons engaged in particular trades or occupations—and certainly we could not attempt anything of that sort—yet, surely it would be unreasonable if they so fixed the fees that the whole cost incurred by them in connection with all the licences or a grossly disproportionate part of it was imposed on one particular trade or a few particular trades. These principles, I think, may be of help in ascertaining whether a particular fee is reasonable or not. Mr. Rangaswami Ayyangar referred us to the case of *Kruse* v. *Johnson*(1) and asked us to accept the view of what is reasonable and unreasonable taken by Lord RUSSELL, C.J., in that case. That I am very willing to do. But we must remember that Lord RUSSELL in that case said that a by-law which was partial or unequal in its operation would be unreasonable; and in the same way I think we can properly say that a licence fee, if it was imposed partially or in a way which would make it unequal in operation, would also be unreasonable.

Mr. Rangaswami Ayyangar has tried to tell us how much the issue of these licences is costing the Corporation a year, and he has put before us some calculations which show that the total cost of the licensing operations is about Rs. 95,000 a year. I cannot say that I am entirely satisfied with the way in which he has arrived at that result. It appears to me that some parts

(1) [1898] 2 Q.B., 91.

of his calculations require a good deal of clearing up. But let us assume that his figures are correct. He has also told us that the total amount collected for these licences is about Rs. 90,000 a year. If these figures are correct, the Corporation is collecting about Rs. 5,000 less than what the licensing operations cost them. If that is so, it would be very reasonable or them to increase their licence fees so as to cover the deficit. How they should increase them is not for us to determine. One obvious method would be an all-round increase of licence fees so as to cover the deficit. Another method would be to find out whether some licence fees are clearly too low and to raise them. But what has the Corporation done in this case? From the schedule with which Mr. Rangaswami Ayyangar has provided us, it appears that there are over a hundred different classes of occupations and trades for which people have to apply for licences. They have selected the one with which we are concerned—the storing of spirits. The fee for storing spirits, before the change with which we are concerned was made, was Rs. 25 a year. The storing of spirits is obviously not a very dangerous thing. It is not a thing which is offensive to the physical senses of persons in the neighbourhood. And the evidence shows that the Corporation and its staff spend practically no time or effort on inspecting places where spirits are stored. For that kind of licence one would expect to find a very moderate fee charged. Perhaps it may be said that Rs. 25 was a moderate fee. But they determined to raise it; and they proceeded to raise it eight times, to Rs. 200. That I find is double the amount charged for storing any other thing, however dangerous or offensive, in this town. It is four times what is charged for licensing places for storing such dangerous things as nitro-glycerine,

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fulminate of mercury and other explosives. It is many times the fee charged for storing fire-works. On the calculations which Mr. Rangaswami Ayyangar has made, it appears that, before this change in the rate of fee, about 1/48 of the whole cost of the licensing operations was collected from the persons who had to obtain licences for storing spirits; after the change, about one-sixth of the whole cost of the licensing operations is collected from them. We are informed that there are only 72 of these particular licences. I find from the schedule with which we have been provided that more than 6,700 licences are issued for trades, businesses and occupations. But 72 of them are made to pay about one-sixth of the cost of the whole licensing operations. I think that, when these facts are stated, no one could really contend that the fee fixed, Rs. 200, is in any sense of the word a reasonable one. That being so, the Council had no power to fix the fee at so high a figure. They appear to have done it with the intention of using their power as a power of taxation; and I may add that they appear to have used their power for improper discrimination.

I therefore agree that there is no sufficient reason for us to interfere with the decree of the learned Judge that the excess over Rs. 25 for each of these licences must be refunded to the plaintiffs. I agree also that the learned Judge went too far when he attempted to decide for the present or for the future what is the reasonable fee which the Council should fix. That I think is a matter for them; and therefore I agree that the words quoted from the decree by my learned brother should be struck out. With that modification, I agree that this appeal must be dismissed with costs.

*Short, Bewes & Co.*—Attorneys for respondent.

B.C.S.