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The result is that we are not satisfied that the charge has been brought home beyond doubt to the accused. It may be that there has been a conspiracy to tamper with the prosecution witnesses in order to obtain his acquittal. If so, this is a matter for regret, but on the record as it stands we think that there is room for reasonable doubt and that the vague confession and the doubtful identification by Rup Narain are not enough to prove the charge, when all the other important prosecution witnesses emphatically deny the guilt of the accused.

We accordingly allow the application and set aside the conviction and sentence.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice King

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Municipalities Act (Local Act II of 1916), *sections* 294; 298(2), *head H(c)—Bye-law—Licence fee for motor lorries imposed by bye-law—Whether* ultra vires*—Licence fee is meant to cover expenses but not as a tax for raising revenue—Unreasonableness of bye-law.*

Under sections 294 and 298(2), head H(*c*) of the U. P. Municipalities Act a Municipal Board is authorised to make a bye-law imposing the obligation of taking out licences for vehicles plying for hire, and charging a fee for such licences.

The Municipalities Act itself contemplates both taxes and licence fees and there is nothing inconsistent between the rules made by the Local Government imposing a tax on motor vehicles and the bye-law made by the Municipal Board imposing the obligation of taking out a licence, and charging a licence fee, for motor vehicles plying for hire.

Licence fees are quite distinct from taxes. Licence fees are intended to cover the expenses incidental to the business of licensing, such as the expenses of collection and of supervision and regulation. It is reasonable that a Municipal Board should recover by means of licence fees the expenses incurred for such purposes, but it was not the intention of the legislature that municipalities should raise revenue for general purposes under the guise of imposing licence fees. If the

*Criminal Reference No. 447 of 1933.

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Municipal Board intends to raise revenue from motor lorries plying for hire, it would be contrary to the spirit and intention of the Act to raise the revenue in the form of a licence fee and not in the form of a tax.

It is a recognized rule of law that bye-laws should not be unreasonable and they may be held to be ultra vires on the ground of unreasonableness; e.g. where the amount of the licence fee imposed by the bye-law is unreasonably high.

Mr. *G. S. Pathak*, for the applicant.

Messrs. *Shiva Prasad Sinha* and *Shabd Saran*, for the opposite party.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN, C. J., and KING, J.:—This was an application in revision against the conviction of one Brij Mohan Lal under section 299 of the U. P. Municipalities Act. The applicant was convicted for the infringement of a bye-law framed by the Agra municipality with reference to motor lorries plying for hire. The bye-law was made by the municipality under section 298(2), head H(*c*) of the U. P. Municipalities Act. The bye-law laid down that no motor lorry of any kind shall be let to hire or offered for hire within the limits of the Agra municipality except in accordance with these rules, and the rules further laid down that the fee for the necessary licence would be Rs.100 per annum. It was proved that the applicant was a resident of Muttra and that he paid licence fees for his lorry within the Muttra municipality. He drove from Muttra to Agra and while he was in Agra he took passengers from Agra back to Muttra. It was proved therefore that he did ply his motor lorry for hire within the municipal limits of Agra without having obtained a licence under the rules mentioned. He was fined Rs.100 by the trial court. The learned Sessions Judge has made a reference to this Court recommending that the fine should be reduced to Rs.50.

It has been argued before us that no offence has been committed as the bye-law which the accused has

infringed was void, being *ultra vires* of the Municipal Board. The argument is that the so-called licence fee is in substance a tax and the Municipal Board could not impose a tax without the sanction of the Local Government and without following the prescribed procedure for the imposition of a tax. In this case the bye-law under which the licence fee is demanded was sanctioned by the Commissioner, to whom the powers of sanctioning bye-laws under section 301 have been delegated. Undoubtedly the licence fee has not been imposed and sanctioned in the manner provided for a tax.

We find, however, that the Act itself provides for the imposition of a licence fee of this description. Under section 298(2), head H(*c*), the Municipal Board is authorised to make bye-laws imposing the obligation of taking out licences on the proprietors or drivers of vehicles kept or plying for hire within the limits of the municipality, and *fixing the fees payable for such licences,* and the conditions on which they are to be granted and may be revoked. Section 294 of the Act also expressly lays down that the Board may charge a fee *to be fixed by bye-law* for any licence which it is entitled or required to grant by or under this Act. It is perfectly clear, therefore, that the Act itself contemplates the making of a bye-law imposing the obligation of taking out licences on proprietors or drivers of vehicles plying for hire and authorises the charging of a fee, to be fixed by bye-law, for such licences. As the Act itself recognizes licence fees as something distinct from taxes and as something which may be imposed and fixed by bye-law, we are unable to accept the learned advocate's contention that the licence fee is practically identical with a tax and therefore could not be imposed except in the manner prescribed for the imposition of a tax.

It has further been argued that the bye-law in question is *ultra vires* because it is inconsistent with the

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rules made by the Local Government for the assessment and collection of taxes on vehicles in the Agra municipality. Under those rules every person residing within the municipality who has in his possession and use a wheeled vehicle shall be liable to pay a certain tax. The rate of tax has been laid down for motor cars at Rs.6 per wheel per annum. It is argued that as this rule imposes upon the possessor or user of a motor car the necessity for paying a tax on his motor car it would be inconsistent to allow the municipality to impose a further pecuniary obligation upon him in respect of the use of that car if he plies it for hire. In our opinion there is no inconsistency between demanding a tax for the use of a motor car for private purposes and demanding a further licence fee for its use when plying for hire. The Act itself contemplates both taxes and licence fees and it cannot be said that there is anything inconsistent between the rules made by the Local Government imposing a tax and the bye-law made by the Municipal Board imposing the obligation of taking out a licence, and charging a licence fee under section 298(2), head H(*c*).

It has further been argued that even if the bye-law is valid and not *ultra vires* for the reason that it has not been imposed or sanctioned as a tax, or for the reason that it is inconsistent with the rules made by the Local Government, still it is invalid on the ground that the amount of licence fee is unreasonable. It is a recognized rule of law that bye-laws should not be unreasonable and they may be held *ultra vires* on the ground of unreasonableness. We think that the intention of the legislature in permitting Municipal Boards to charge licence fees was to cover the expenses incidental to business of licensing, such as the expenses of collection and of supervision and regulation. In the present case it is clear that the Municipal Board will have to employ certain officials for inspecting and regulating the motor lorries which are licensed to ply for hire and

for collecting the licence fees. It is reasonable that the Board should recover by means of licence fees the expenses incurred for such purposes, but we do not think it was the intention of the legislature that municipalities should raise revenue for general purposes under the guise of imposing licence fees. If the Board intends to raise revenue from motor lorries plying for hire we think it would be contrary to the spirit and intention of the Act to raise the revenue in the form of a licence fee and not in the form of a tax. In the present case we have no facts upon which we can come to any conclusion as to whether the amount of licence fee is reasonable or not. The point was not raised in the trial court and the Municipal Board were not in a position to produce any evidence showing that the amount of licence fee was not unreasonable. We, therefore, cannot hold that the bye-law is invalid on the ground that the amount of licence fee was unreasonable. This is, however, a question which the Commissioner or the Local Government may consider. *Prima facie* it may be suspected that the amount of Rs.100 per annum is rather high with reference to the extra work imposed upon the Municipal Board in connection with the licensing business.

The recommendation that the fine should be reduced to Rs.50 seems to us reasonable. We, therefore, allow the application to this extent that we reduce the fine from Rs.100 to Rs.50 but maintain the conviction.

MISCELLANEOUS CIVIL

Before Mr. Justice Bennet

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OFFICIAL LIQUIDATOR, INDIAN STATES BANK (APPLICANT) *v.* RUKMINI RANI AND OTHERS (OPPOSITE PARTIES)*

Court Fees Act (VII of 1870), *section* 19(*iii*)—*Exemption from court fee—Written statement in a miscellaneous case—Reply to application by Official Liquidator—Civil Procedure Code, section* 141.

*Stamp Reference in Miscellaneous Case No. 784 of 1931.