

wheel, and have to be replaced frequently. But on this ground they cannot cease to be component parts of the wheel. It is impossible to regard them as a part of the body of the car or any other dispensable part.

We are accordingly of opinion that tubes and tyres, which are specially designed for motor cars only, and are not meant for anything else which is not a machinery, are under class (14) exempt from the payment of octroi.

We accordingly accept the reference made by the Additional Sessions Judge of Benares and set aside the order convicting and sentencing the accused and direct that the fine, if paid, be refunded.

### REVISIONAL CIVIL

*Before Mr. Justice Bennet*

MUNNA LAL AND SONS (PLAINTIFF) *v.* MUNICIPAL BOARD, JHANSI (DEFENDANT)\*

*Municipalities Act (Local Act II of 1916), sections 160, 164—  
Octroi—Assessment to octroi charge—Civil suit challenging  
liability of the goods to pay octroi—Jurisdiction of civil  
court barred.*

The remedy open to a person who has been assessed with octroi duty in respect of goods which, according to him, are not liable to the payment of any octroi duty is by way of an appeal to the District Magistrate under section 160 of the Municipalities Act. Civil courts are precluded, under section 164 of the Act, from entertaining a suit questioning the liability of a person to be assessed to any municipal tax, and octroi is a municipal tax, as laid down in section 128(1) of the Act.

Mr. S. C. Das, for the applicant.

Messrs. *Shiva Prasad Sinha* and *Shankar Sahai Verma*, for the opposite party.

BENNET, J.:—This is a civil revision brought by a plaintiff against a decree of the small cause court in Jhansi. The plaintiff imported into Jhansi a number of articles on which he was charged Rs.237-7-9 octroi.

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The plaintiff contends that the articles which he imported do not come under the headings in the octroi schedule under which they have been assessed to octroi. The articles in question are shown in a number of invoices to consist of fuses, cables, wire, fuse handles, Britalux fittings, electric bulbs, etc. The series of schedules under which these articles have been assessed refer to articles made of brass, copper, bronze, rubber, Nos. 80 to 83, and earthenware, No. 44. Some objection was taken that No. 44 comes under the heading of "Building materials and furniture" and learned counsel argued that electric fittings would not come under either of those heads. He failed to explain under what head of house construction electric fittings would come. It appears to me that electric fittings in a house do come under the heading of building materials and furniture. Learned counsel argued that an octroi schedule should be framed on the lines that every single article which might be imported into a municipality on which duty was to be levied should be described by name; in other words that Britalux fittings should be so mentioned and also fuse handles. I do not consider that this is a possible method of framing an octroi schedule. The method which is adopted is to use general terms under which the innumerable different articles are included and they are classified as regards the metals of which they are composed. It would not be possible to frame an octroi schedule which would have ten million different kinds of articles mentioned. The finding therefore of the lower court that these articles come under these headings appears to me to be correct. I am referred by learned counsel to a ruling of a learned single Judge of this Court in *Municipal Board, Benares v. Krishna and Co.* (1). That ruling laid down that an electric fan and motor would not come under the term "hardware" in an octroi schedule because "hardware" referred to articles such as pots and pans and domestic

(1) [1934] A.L.J., 761.

appliances and simple articles made of metal. The present case does not involve the term "hardware" in the schedule and therefore the ruling has no application to the present case.

A further argument was made by learned counsel that the lower court was wrong in stating that section 164 of the U. P. Municipalities Act, Act II of 1916, barred the present suit. That section states in sub-section (1): "No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act." In section 160(1) it is provided as follows: "In the case of a tax assessed upon the annual value of buildings or lands or both an appeal against an order passed under sub-section (3) of section 143 or under sub-section (3) of section 147, and, in the case of any other tax, an appeal against an assessment, or any alteration of an assessment, may be made to the District Magistrate or to such other officer as may be empowered by the Local Government in this behalf." In my opinion this allows an appeal to be made to the District Magistrate against an assessment under the octroi schedule. Learned counsel argued that this sub-section referred only to taxes on lands and buildings, but the sub-section clearly refers to the case of any other tax. "Octroi" is referred to in section 128(1)(viii) as one of the taxes which may be imposed by a Municipal Board. Accordingly it must be one of the other taxes under section 160(1) which are subject to an appeal to the District Magistrate. Argument was made by learned counsel that there is no assessment in the case of octroi. I consider that the process by which an octroi muharrir examines goods and refers to his schedule and comes to the conclusion that certain goods come under certain heads of that schedule and should pay a certain tax is a process which is correctly described as "assessment". Therefore the correct remedy open to the applicant was

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to proceed by way of appeal to the District Magistrate under section 160, Municipalities Act; and under section 164, Municipalities Act, the applicant was precluded from making the claim in court which he has made.

For these reasons I dismiss this application in revision with costs.

## APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and  
Mr. Justice Ganga Nath*

1934

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NAWAL KISHORE AND OTHERS (DECREE-HOLDERS) v.  
BUTTU MAL (AUCTION PURCHASER) AND SURHAN SINGH  
(JUDGMENT-DEBTOR)\*

*Civil Procedure Code, order XXI, rules 85, 86—Re-sale on  
default of payment by auction purchaser—Mandatory and  
not discretionary—Time can not be extended.*

When default is made by the auction purchaser in paying into court the full amount of the purchase money within the time allowed by order XXI, rule 85 of the Civil Procedure Code, the court has no jurisdiction to extend the time but must order a re-sale under rule 86. The only discretion given by rule 86 is in the matter of forfeiture of the deposit of 25 per cent. made by the auction purchaser, and not in the matter of re-sale. *Basawan Dube v. Anpurna Kunwar* (1), overruled.

Mr. M. L. Chaturvedi, for the appellants.

Mr. R. K. S. Toshniwal, for the respondents.

SULAIMAN, C.J., and GANGA NATH, J.:—This is a decree-holders' appeal from an order confirming the sale. The property was sold at an auction on the 9th of October, 1930, for Rs.2,325 and was purchased by the respondent, Buttumal. The auction purchaser deposited 25 per cent. as required by order XXI, rule 84, immediately, but he did not deposit the balance of the purchase money within 15 days as required by rule 85. Possibly the reason was that an application was filed on

\*First Appeal No. 147 of 1933, from an order of Muhammad Akib Nomani, Subordinate Judge of Agra, dated the 26th of April, 1933.

(1) A.I.R., 1926 All., 509.