

cation. In circumstances very similar to these their Lordships in the case of the *Oudh Commercial Bank v. Bind Basni Kuer* (1) came to the conclusion that the application which they were considering was not a fresh application. The question whether an application is a fresh application or is merely one to revive the previous execution proceedings has always to be decided upon the circumstances of each case and in each case the substance of the matter must prevail over the form of the application. It is true that the decree-holders did not put their case in this way before the court below nor did the learned Subordinate Judge consider it from this point of view, but this omission does not disentitle the decree-holders from advancing the present argument.

For the reasons given above we hold that the application dated the 23rd of December, 1931, was in substance an application to revive the previous execution proceedings and in this view of the matter no question of limitation arises. We accordingly dismiss this appeal with costs.

1940

 MAHENDRA
 RAO
 v.
 BISHAMBHAR
 NATH

 APPELLATE CIVIL

*Before Sir John Thom, Chief Justice, and Mr. Justice
 Ganga Nath*

JASWANT SINGH (PLAINTIFF) v. EXECUTIVE OFFICER,
 MUNICIPAL BOARD, MEERUT (DEFENDANT)*

 1940
 February, 2

*Municipalities Act (Local Act II of 1916), sections 160, 164—
 Illegal exaction of licensing fee for thelas not liable therefor
 —Remedy—No remedy prescribed by the Act—Civil suit
 maintainable—"Assessment" does not include demand for
 licensing fee.*

A civil suit, for the refund of money illegally exacted by municipal authorities from the plaintiff as licensing fee in respect of his thelas which were not liable under the Municipalities Act for any such payment, is not barred by section 164 of the Act and is maintainable.

*Appeal No. 44 of 1939, under section 10 of the Letters Patent.
 (1) (1939) I.L.R. 14 Luck. 192.

1940

JASWANT
SINGH
v.
EXECUTIVE
OFFICER,
MUNICIPAL
BOARD,
MEERUT

The fee demanded from the plaintiff could not come within the term "assessment" in section 160 of the Act, so an appeal under that section was not available to the plaintiff. There was no provision in the Act for any remedy against an impost such as the one which was exacted from the plaintiff, and he was therefore entitled to seek redress in the civil court.

Mr. *Shiva Prasad Sinha*, for the appellant.

Mr. *S. N. Gupta*, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a plaintiff's appeal against an order of a learned Judge of this Court. The appeal arises out of a suit for the recovery of Rs.48.

Briefly the relevant facts are as follows. On the 4th and 6th September, 1934, the licensing inspector of the Municipal Board of Meerut stopped two thelas, the property of the plaintiff, and demanded a licensing fee of Rs.12 in respect of each thela. The thelas were taken to the municipal office and detained there. The thelawalas were allowed to return with their buffaloes and report to their employer. The plaintiff thereupon under protest paid the licensing fee demanded. In the suit out of which this appeal arises the plaintiff claimed a refund of Rs.24 and a further Rs.24 in name of damages.

The learned Munsif granted a decree for the refund of the Rs.24 and for Re.1 in name of damages. The defendant appealed and in the lower appellate court the learned Civil Judge dismissed the suit on the finding that the court had no jurisdiction to entertain the plaintiff's claim in view of the provisions of section 164 of the Municipalities Act of 1916. The decree of the lower appellate court has been upheld in this Court in second appeal.

It was contended for the appellant that the municipal authorities were not entitled to charge him a licensing fee in respect of his thelas under the provisions of the Municipalities Act. Section 128 of the Act upon which the defendant relies empowers a municipality to "impose a tax on vehicles and other conveyances plying for hire

or kept within the municipality or on boats moored therein." Now the finding of the trial court and the lower appellate court is that the plaintiff's thelas do not ply for hire nor are they kept within the municipality of Meerut. Clearly therefore the municipal authorities were not entitled to exact from the plaintiff a fee in respect of his thelas. The defendant maintained, however, that the plaintiff's remedy was not by way of a suit in the civil court but in the manner described by the Municipalities Act.

Section 164(1) of the Municipalities Act enjoins that "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." Section 160(1) declares the method by which a tax-payer who is aggrieved may challenge the assessment by the municipal authorities. Section 160(1) enacts: "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."

It is to be observed that this section provides for an appeal against an assessment. There is no provision for any appeal against an impost such as the one which has been exacted from the plaintiff in the present instance.

It is abundantly plain that the municipal authorities had no right to demand a tax from the plaintiff in respect of his thelas. It is further clear that the Municipalities Act does not provide any method by which the plaintiff could challenge the tax. The sum of Rs.24 has been exacted from the plaintiff in a high-handed and arbitrary manner. His thelas did not ply within the municipality of Meerut nor were they kept there. The

1940

JASWANT
SINGH
P.
EXECUTIVE
OFFICER,
MUNICIPAL
BOARD,
MEERUT

1940

JASWANT
SINGH
v.
EXECUTIVE
OFFICER,
MUNICIPAL
BOARD,
MEERUT

plaintiff must have a remedy in these circumstances. No remedy is provided for him in the Municipalities Act. He is therefore entitled to seek redress in the civil court.

It may be observed that the fee which the municipal authorities have demanded from the plaintiff was not in any sense of the term an assessment. Under the Act and bye-laws framed thereunder the duty is cast upon the owner of a vehicle plying for hire or kept within the municipality to apply for a licence. If he fails to do so the municipality under their rules may prosecute him and he may be fined. In the present instance the conduct of the servant of the municipality in exacting payment of a licensing fee from a person who was not under the bye-laws bound to take out a licence was quite irregular.

In the result the appeal is allowed, the order of this Court is set aside and the decree of the trial court restored. The plaintiff is entitled to his costs throughout.

SPECIAL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Rachhpal Singh and Mr. Justice Ismail

IN THE MATTER OF AN ADVOCATE OF AGRA*

1940
February, 5

Advocate—Professional misconduct—Gross negligence—Not professional misconduct unless disgraceful or dishonourable conduct—Neglecting to certify in court realisation of decretal amount though undertaking to do so—Bar Councils Act (XXXVIII of 1926), section 10.

Mere negligence, even of a serious character, does not amount to professional misconduct unless there is an element of moral delinquency and the conduct is such as would be regarded as disgraceful or dishonourable by advocates of good repute and competency.

So where the decree-holder's advocate was paid the decretal amount by the judgment-debtors and he gave a receipt for the money stating that the payment had been, or rather would forthwith be, certified by him in court, but in fact he failed to make the certification, and it was found that there was no dishonest motive, it was held that the failure to make the certifica-

*Miscellaneous Case No. 524 of 1939.