In modification of above G. R. 7651 of 13 November 1912 G. D. delegated to the Commissioner in Sind the powers under section 11 of the Act in respect of City Municipalities save in contravention of any general rules, etc.

(3A) 'Municipal Commissioner' shall mean a person appointed under the provisions of section 186A, and shall include a person appointed to act as Municipal Commissioner under subsection (3) of section 186D.

Municipal Commissioner—This definition was added by sec. 2 Bom. Act VIII of 1914, the "Statement of Objects and Reasons" of which says that the new sections now added to chapter XIII provide "for the appointment in Municipalities having a population of not less "than 1,50,000 (now in the Act 1,00,000) of a chief executive officer to be called a Municipal "Commissioner, who is to exercise powers similar to those exercised by the Municipal Com-"missioner, Bombay. The necessity for the appointment is due to the growing volume and "complexity of Municipal administration in the largest towns, to which the ordinary system of "administration by committees and also the special provisions of chapter XIII relating to the "appointment of a Chief Officer have proved unsuitable. With some exceptions it has been "provided that the executive functions of the Municipality shall be performed by the Muni-"cipal Commissioner, an appeal being allowed against his orders in a few cases only. The "Municipal Commissioner will exercise a greater degree of control over the Municipal staff "than is vested in the Chief Officer."

(4) "Judge" shall mean District Judge, Joint Judge, Assistand Judge, Judge of a Court of Small Causes, Subordinate Judge, Joint Subordinate Judge, or a Judge appointed under the Dekkhan Agriculturists' Relief Acts, 1879 to 1895.

It was thought desirable to introduce this definition in order to avoid reiteration or ambiguity in subsequent clauses.

(5) "Municipal district" shall mean any local area which is at present a municipal district, and any local area which may hereafter be constituted a municipal district under section 4, if such municipal district has not ceased to exist under the provisions of the said section.

By Section 4 of the Bom. Local Board's Act, 1884, the area within a municipal district is not subject to a Local Board, so that a municipal district cannot be included in a group whatever its population may be.

But areas which are constituted municipal districts temporarily only under section 13 of Bom. II of 1884, should not be excluded from the village groups within which they are comprised (G. R. 8030 of 10th October 1884, Rev. Dep.)

(6) "Land" shall include land which is built upon or covered with water.

This is taken from the City of Bombay Municipal Act, 1888, section 3 (r). The old definition said "shall include buildings, trees, and appurtenances thereon."

Shall include.—The word "include" is generally used in interpretation clauses to enlarge the meaning of words so as to make them comprehend not only not things as they signify according to their natural import but also the things they are declared to include. (*Reg.* vs. *Kershaw* (1856) 6 E. B. 909, 1007; *Delwoth* vs. *Commissioner of Stamps* (1899) A. C. 99. 105)

(7) "Building" shall include any hut, shed, or other enclosure, whether used as a human dwelling or otherwise, and shall include also walls, verandahs, fixed platforms, plinths, door-steps, and the like.

The words " fixed platforms, plinths " are new. They would include what in Sind are known as " dikkies."

The Madras Act (4 of 1884), section 3 (1) says " roofed enclosures and constructions appurtenant thereto."

Building.—A mere wattle fence cannot be regarded as coming within the definition of a " building " as contained in this Act (*i. e.* Bom. VI of 1873), the buildings specified being all of a substantial kind. For a similar reason such a fence would not come under the expression ' enclosure '; moreover that expression seems to mean an enclosed area rather than the wall or fence enclosing it. The conviction under section 33 of that Act, for putting up a fence within the compound belonging to his house without permission, was therefore reversed (Bom. H. C. Crim. ruling No. 92 of 21st Dec. 1888. *In re* Salomibai.)

A *katta*, which is permanent in character and which serves as a broad extended door-step or raised platform of communication with the public road, is included in the term ' door-step.' (*In re Devandrappa*, Bom. H. C. C. ruling No. 47 of 1889.)

A " karavi " or reed fencing is not a building within the meaning of clause 1 of section 33 of Bom. VI of 1873 (*Queen Empress* vs. *Janardhan*. Unreported Criminal Cases p. 145)

(8) " Owner " shall include the person for the time being receiving the rent of lands and buildings, or either of them, whether on his own account, or as agent or trustee for any other person or for any society, or for any religious or charitable purposes, or who would so receive the rent if such land or building were let to a tenant: Provided that no person receiving the rent of any land or buildings as agent or trustee for another person, shall be liable to do anything by this Act required to be done by the owner of such land or building which may involve expenditure on the part of such owner, unless he have funds of, or due to, the owner sufficient to pay for the same; nor shall he be subject to any penalty for omitting to do such act, if he can prove that the default was occasioned by reason of his not having funds of, or due to, the owner sufficient to defray the expense of doing the act required.

This is the old definition very slightly modified by the addition of the words " which may involve expenditure on the part of the owner." In the Bombay City Act, 1888, it includes " a receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have charge of, or to exercise the rights of an owner of, the said premises."

The definition, with the exception of the proviso, corresponds exactly with section 3 (5) of the Punjab Act.

It is to be observed that though an agent or trustee " for another *person*," not in possession of funds, is exempt from the definition by the proviso, this does not extend to an agent or trustee " for any society, or for any religious or charitable purposes."

Again the proviso applies only to the liability " to do anything by this Act required to be done * * * which may involve expenditure." Hence no agent or trustee is exempt from *payment of taxes*, even though not in possession of funds.

In the Madras Act, the definition also includes " the person for the time being * * * in charge of the animal or thing in connection with which the word is used.

Owner, where it is doubtful who is :—The owner of certain land which he had leased to another for a period of 40 years was required by the Municipality to carry out certain works to remedy the insanitary condition of the *busti* thereon. The owner maintained that as he had ceased to exercise the rights of an owner so far as to able to be change the character of the land, not he but the lessee should be served with the notice. This the Municipality refused to do and on being prosecuted the owner was convicted and fined. It was admitted that the lease did not stipulate who was to carry out the improvements required by the Municipality.

Held.—That the Legislature has given power to the Municipality to determine in a case, where there are gradations of owners or persons, who may be regarded as owners, or where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be deemed to be bound to perform such duty. That discretion having been by law vested in the Municipality, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question the acts done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law. (*Shamul Dhone Dutt V Corporation of Calcutta*, I. L. R. (1907) 34 Cal. 30; 11 C. W. N. 671.)

Owner for the purposes of qualifying as a voter:—See I. L. R. 38 Cal. 501 noted sec. 12.

Son paying portion of purchase money of house with his father when an owner. See. I. L. R. 38 Cal. 501.

Where *debutter* property is managed according to a settled scheme by the co-sebaits in rotation, and the rents and profits collected, for the time being, by the persons enjoying their turn, a sebait out of turn is not an "owner" within the meaning of s. 3 (32) of the Calcutta Municipal Act, nor in any other sense, and is not liable to carry out a requisition under s. 408 of the Act for *bustee* improvements. A sebait is not an owner but only a manager for the deity. (*Ratnendra Lal Mitter v. Corporation of Calcutta* (1913 I. L. R. 41 Calc. 104; 17 C. W. N. 1084.)

Owner of building let (1) *with power to sub-let*, (2) *in parts to tenants*:—The word "owner" as defined in section 3 (8) is wide enough to include the case of a building, which, having been let to a tenant with power to sub-let, is sub-let by the tenant, as well as the case of a building simply let. In the former case, the tenant who has sub-let becomes the owner and the landlord of the lodgers, tenants of the building. He represents them for purpose of the section, because, according to the law of landlord and tenant, there is no privity of contract or estate between a lessor and a sub-lessee, unless there is an agreement creating such privity. It follows therefore that, when a building is sub-let, the lessee who sub-lets is the owner of the building within the meaning of the section. The section contemplates the whole building taken as one undivided entity and its owner as a single person and not one who is lessee of parts of the building. If the proprietor of a building consisting of several rooms let it in part to several tenants with power to sub-let and each or some of them sub-let, the tenants who have sub-let are not "the owners of the building" because the law contemplates a person who is "the owner of the building" that is to say, of the whole building, which tenants of portions who have sub-let are not. In that case the person "who receives the rent of" the *building* is its proprietor who has let it to the tenants with power to sub-let. He is therefore the owner liable under the section (*The Municipal Commissioner* v *Mathurdass* I. L. R. (1911) 36 Bom. 81; 13 Bom. L. R. 640; 1911, 11 Ind. Cas. 995.)

A Receiver appointed by the High Court:—Such a person is not the "owner" of the property of which he has been appointed Receiver, within the meaning of s. 3, cl. (32) of Bengal Act III of 1899; as he recovers the rent not "on his own account as agent or trustee" but as an officer of the Court; nor can he be made a party to any suit or proceeding without the leave of the Court appointing him.

Dunne v *Kumar Chandra Kisore* I. L. R. (1902) 30 Cal. 593; 7 C. W. N. 390. referred to. (*Fink* v *Corporation of Calcutta* I. L. R. (1903) 30 Cal. 721.)

Where an "owner" whose estate is in the hands of a 'Receiver' is required to do anything under the Act, he should request the Receiver to comply, otherwise he cannot escape liability. See note of I. L. R. 38 Cal. 714 sec. 98.

(9) "Salaried servant of Government" shall not include a retired servant of Government in receipt of a pension, or a person in receipt of a salary from Government who is not a full time servant of Government.

The latter part of this clause was inserted to make it clear that such a person as a Government Pleader did not come within the definition.

It was objected that such officers, though not in full time service, having all the sympathies of the service, were thus eligible as nominated members, and, if nominated, would disturb, in favour of Government, the proportion laid down by section 10. On the other hand it was contended that such officers were quite disinterested persons, were often most useful members, and Government should not be deprived of their valuable aid.

(10) "Official year" shall mean the year commencing on the first day of April.

This is taken from the City of Bombay Municipal Act, 1888, section 3 (*bb*). By the Bombay General Clauses Act I of 1904, section 3 clause (19) this is the definition of 'financial year,' and by clause 51 (4) "year" means a year reckoned according to the British Calendar.

(11) "Annual letting value" shall mean the annual rent for which any building or land, exclusive of furniture or machinery contained or situated therein or thereon, might reasonably be expected to let from year to year.

This is taken from section 154 of the City of Bombay Municipal Act, 1888.

"*Annual letting value.*"—Section 42 (2) of the Panjab Act (20 of 1891) provides that "'annual value' means the gross annual rent for which buildings and lands liable to taxation may reasonably be expected to let, and, in case of a house, may be expected to let unfurnished." See also the proviso as to land assessed to land revenue, &c.

Reasonably be expected to let.—What a hypothetical tenant in the same position as the owner and needing the building for its proper use would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense. (*Secretary of State* vs. *Municipal Committee of Madras.*—I. L. R. 10 Mad. 38).

Madras Act, section 65, follows the Panjab definition exactly except the last 11 words, but provides that this value is not to include furniture or machinery.

Annual income not annual letting value: basis of assessment in exceptional cases:—The Western India Turf Club was the lessee from Government of the Race Course at Poona and was liable to be assessed for the property at a general property rate of 4 per cent. per annum of the annual letting value. The rate when revised was increased to Rs. 9,544 on an annual gross income from certain sums of Rs. 2,46,000 this income being considered as the annual rent that a tenant from year to year would pay. The income consisted of fees paid by book makers, keepers of refreshment stalls, for public admittance as spectators to the races &c. The net profits of the club were Rs. 30,000 a year. *Held* that the assessment was wrongly made and was therefore illegal and the tax paid should be refunded.

As to how the annual value should have been calculated the learned District Judge in his judgment says. The items of income could not be said to be rent but they are increase fees, nor could the total of the fees be the sum at which the Club "might reasonably expect to let the premises" in the exceptional circumstances of the case, so it was not the "gross annual rent" nor the "annual value," and that the method of taxtation was not authorized by the regulations. This being an "exceptional case" the proper method of ascertaining the rateable value is that laid down in Reg. v Verrall (1 Q. B. D. 9). In brief, the recent average receipts and expenditure of plaintiffs ought to have been considered as an element in ascertaining the rateable value. It was not held that this must be the only element, but, in cases where no means for a comparison exists, obviously this point has great importance. The same view was taken in *Clarke* v *Fisherton-Augar* (6 Q. B. B. D. 139) and *the Mersey Docks and Harbour Board* v *The Assessment Committee of Birkenhead* (I. Q. B. (1900) 143), confirmed by Privy Council (L. R. (1901) 175). (*Secretary of State for India* v *Major Hughes*, I. L. R. (1914) 38 Bom. 293.)

(12) "Street" shall mean any road, footway, square, court, alley or passage, accessible whether permanently or temporarily to the public, whether a thoroughfare or not;

and shall include every vacant space, notwithstanding that it may be private property, and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid.

STREET.—In the old Act of 1873, "shall include any way, road, street, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of passage or access, or shall have, during a period of 20 years, passed or had access without interruption; and also the roadway or footway over any public bridge or causeway."

Bom. Act II of 1884 substituted a definition which, as section 3 of the Act, provided that the word "shall mean any street, way, road, square, court, alley or passage over which the public have a right of way, or which is used by the public as a means of access.' The amended definition eliminated the special rule of prescription, and left all questions as to the right of the public to the use of roads or ways to be decided by the general law of the country.

The Select Committee in framing that definition stated that they endeavoured to give the word the meaning required for the purposes of Municipal law. They add "It should not apparently comprise any alley or passage however private the use thereof may be, but only such as are used by the public, and the bad ordering of which may injure or endanger the public. Some 'streets' so used may be private property, and when 'streets' vested in the Municipality are intended, the word 'public' is prefixed. The duty of keeping in good order any land or building not used by the public as a means of access, may be enforced under provisions of this Act as sections 55 and 58."

The new definition now omits all the latter part of that amended definition lest, it was said, any piece of land used by the public (for ever so brief a time) as, for instance, a "short cut" to any place, should become Municipal property.

The Bill contained the following illustrations to this definition, but they have been now omitted as being unnecessary or conducing to possible mis-construction:—

(*a*) A pol or khadi in Gujarat is a street within this definition. (*b*) The approach to a railway station from which the Railway Company are entitled to exclude any persons, is not a street within this definition. (*c*) An open maidan with no houses abutting on it, is not a street within this definition. (*d*) A garden or square from which any occupier of such building abutting on it can exclude strangers, is not a street within this definition. (*e*) An angan is not a street within this definition.

The Bombay City *Act*, section 3 (*w*) says "street" includes any highway and any causeway, bridge, viaduct, arch, road, lane, footway, square, court, alley or passage whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of 20 years; and, when there is a footway as well as a carriage-way in any street, the said term includes both."

Roads dividing off small plots are streets:—The owner of a large plot of ground abutting on a high way divided the plot into 19 small plots and sold them to different purchasers. These plots were mapped out as abutting on the sides of two parallel roads which were marked out as proposed roads. Each of the purchasers of the plots entered into a covenant with the owner to keep open that portion of the proposed road which stood in front of his plot and to repair so much of the road. The question arose whether the proposed road was a street within the meaning of the City of Bombay Act. *Held*, that the proposed road would constitute a street within the meaning of that Act. I. L. R. 6 Bom. 686, 20 Bom. 83; 20 Bom. 146 referred to and distinguished. (*Municipal Commissioner for City of Bombay* v *Mathurabai*, I. L. R. (1906) 30 Bom. 558; (1906) 8 Bom. L. R. 457.)

Under 38 and 39 Vic. c. 55 (*The Public Health Act*, 1875) street includes any highway, and any public bridge, and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not." *The Punjab Act*, 1891, section 3 (4), defines street as including "any way, road * * * whether a thoroughfare or not, over which the public have a right of way and also the roadway and footway, over any public bridge or causeway. *The Central Provinces Act*, sec. 3 (31), follows this exactly. *The Lower Burma Municipal Act*, 1884, section 2, adds to the definition "and includes the surface soil and sub soil of any such street and the footway and drains of any such street, &c." *The Madras Act*, section 3 (27) adds "together with the drains on either side and with the land, whether covered or not by any pavement, verandah or other erection, which lies on either side of the roadway up to the boundaries of the adjacent property." Also includes the roadway over any public bridge or causeway. See also *Bengal Act III of* 1884, and note to section 50 *post*.

See also the English cases in Law Reports 16 Equity Cases, 108; 9 Queen's Bench Division, 183; 14 O. B. D. 849; 17 O. B. D. 30; 4 Chancery Division, 395; 44 Ch. D. 110; 4 Exchequer Cases, 319; 7 Exchequer Cases, 369.

The Calcutta Act provides that a "private street" means any street, road, square, court, alley, passage or riding path which is not a "public street" as defined in this section, but does not include a pathway made by the owner of a building on his own land to secure access to, or the convenient use of, such building."

Pathway when not a street :—Where there are 4 buildings owned by 4 different persons bearing 4 different assessment Nos. which abut on a passage which is not a public street, *Held*, that it was a pathway made by the owner of a building on his own land to secure access to, or the convenient use of, such building, and that it is not a private street as defined above. (*Hari Mati Dasi* v *Corporation of Calcutta* 13 C. L. J. 219; (1910) 8 Ind. Cas. 891.)

Open spaces.—The latter part of this definition is new, and was drafted for the express purpose of including in the term 'street,' 'Pols' and 'khudkis.'

The following very apposite remarks were made in *Tayler* v *Corporation of Oldham* (1876) 4 Ch. D. 395, p. 408:—

"The owners of these private courts and alleys are, of all people in the world, the most averse to laying out money in sanitary works. It is in these places that the poor live, the very people who suffer most from the want of sewerage and drainage, which are so requisite for public health. Is it to be imagined that the Legislature intended to except such places as these from the operation of the Act? I should say if the Act were passed for anybody, it must have been meant to include those owners, who, for the sake of gain and acquiring high rents in proportion to the annual value of the wretched tenements they allow the poor to occupy, neglect ordinary and necessary sanitary precautions. If I were to interpret it by what I might think to be the mind of the Legislature, I should suppose that the first people to be included would be the owners of these crowded courts and alleys, over which the public have no strict rights whatever, but which are intended to be used for the dwellings of the poor, and are unprovided with what, according to modern science, is known to be absolutely necessary for their well-being."

(13) "Public street" shall mean any street—

(*a*) over which the public have a right of way, or

(*b*) heretofore levelled, paved, metalled, channelled, sewered or repaired, out of Municipal or other public funds, or

(*c*) which under the provisions of section 90 is declared by the Municipality to be, or under any other provisions of this Act becomes, a public street.

There was no definition of the term under the old Acts; this is taken from the Bombay City Act, except para (*a*) which does not therein appear. See note to section 50 (2) (*f*).

Private Street :—This Act contains no definition of "private street," as the expression is not made use of. The Bombay City Act, section 3 (4) says it "means a street which is not a public street."

Footway and drains included in public street :—The Calcutta Act, sec. 3 (36) says a 'public street' includes "(*b*) the footway attached to any such street, &c.

(*c*) the drains attached to any such street, public bridge or causeway, and where there is no drain, shall be deemed to include also, unless the contrary is shown, all land up to the outer wall of the premises abutting on the street, or if a street alignment has been fixed, then up to such alignment."

'*Street*' *as defined in clause* (12) '*means a footway.*'—There is no sufficient reason for the contention that drains and gutters alongside a public street do not fall within the definition of a public street, unless they are so covered that the surface of the covering is part and parcel of the surface of the street and is used as a thoroughfare in the same way as the surface of the rest of the street. In ordinary parlance a street certainly includes the gutters, foot-paths, etc., that may be alongside the main roadway. A man would, for instance, be said to be "in the street," though he was not in the actual part of it used for traffic, but standing in the gutter alongside: and two boys gambling in a Municipal drain alongside the street would surely not be allowed to plead that they were not gaming in a public street under section 12 of Bombay Act, IV of 1887. And this must almost necessarily be so, because as stated in Bouvier's Law Dictionary, Volume II, page 1049, "a street, besides its use as a highway for travel, may be used for the accommodation of drains, sewers, acqueducts, water, and gas pipes, lines of telegraph, and for other purposes conducive to the general police, sanitary and business interests of a city." "A roadside gutter is also practically a part of a street provided for carrying off stormwater, etc., and so requisite for its preservation for the usual and intended purposes. (Cf *Nagar* v *Municipality of Dhandhuka*, Indian Law Report 12 Bom. 490, at page 496.) Then is there anything in the Bombay District Municipal Act, 1901, which indicates that the legis-

lature did not intend gutters, etc., to be included in the definition of "street" unless they were covered to the extent specified by Mr. Orr? He cites some instances where streets and drains or gutters are seperately catalogued: but on the other hand there are plenty of instances where such drains or gutters are recognized as part of a street, e. g. section 3 (13), where "public street" is defined to include a "street . . . . . channelled, sewered," etc., out of Municipal.....funds, and section 121 (1) and (2), where gutters are ranked with the pavement or flags of a public street. The public also have access to an open gutter, and can, if necessary, use it as a footway, so that it falls within the definition of "street" in section 3 (12). I do not think therefore that there is any real warrant for the view put forward in Mr. Orr's paragraph 18. (Legal Rembrancer G. R. 3076 of 16-4-1908 G. D.)

It was held in I. L. R. 28 Mad. 17 that where the Act did not define 'street' a drain on the side of the street did not come within the street, so far at any rate as the circumstances of the case was concerned.

Public right of way.—A suit will lie for a declaration of right of an individual community to use the public road. Every member of the public and every sect has the right to use the public street in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege. (*Baslingappa, P. Cheduchal* v *Dharamppa B. Cheducha* I. L. R. (1910) 34 Bom. 571; 12 Bom. L. R. 586.)

Continued use by public of way when makes it a public way.—Continued user by the public of a way raises a presumption that that way belongs to the public, that it has been dedicated by the owner for the public use for which it has been used, and it is not incumbent upon the public to show by what particular owner the road has been dedicated. *Mahmada Mudaha* v *Nallayya Goundon* (1909) 19 Mad L. J. 467; 6 M. L. T. 285; I. L. R 32 Mad. 527; 1909, 4 Ind. Cas. 870.)

As to rights of religious processions along streets see 19 Mad. L. J. 617. Dedication of a road to the public may be express or implied. The most common mode in which a highway is supported as such is by prescription. If all persons without distinction have indiscriminately for a considerable period of time without interference used and enjoyed the way, such a way will be presumed to be a highway. *The Collector of Surat* v *Nasarwanji Daraspa*, 1880 P. J. 159.

Right of access to public street:—An owner of land adjoining a highway is entitled to access to such highway at any point at which his land actually touches it, but he has no such right if a strip of a land, however narrow, belonging to another and not subject to the public right of passage, intervenes. This right of access is a private right, and is distinct from the right to use such highway as soon as he is upon it, which he enjoys only as a member of the public. Interference with such private right will, if wrongful, support an action and amounts to "injurious affection" of his premises for compensation purpose (*Moore Grt. S. & W. Railway Co.* 10 I. C. L. Q. 46 Ex. Ch.) Where an obstruction interferes with a person's public right only, and not with his private right of access, his claim if any, must be based upon the ground of a public nuisance causing special damage to him (Halbury's Laws of England Vol. 16.)

Metalled and unmetalled portions equally part of road—Right of public way. Where the question is as to the breadth of a public road, it must be taken that all the ground over which the public have a right of way is part of the road: the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street. (*Municipal Board of Agra* v *Sudarshan Das Shastri*, I. L. R., 37 All 9.)

The mere fact that Municipal sweepers were employed in sweeping a street and that the Municipality kept up lamps in that street were not sufficient by themselves to establish that the street was a public one. (*The Ankleshwar Municipality* vs. *Rikhavchand* 2 Bom. L. R. 1076; I. L. R. 25, Bom. 315).

"*Repaired*".—Stopping up holes made by rats and setting right slabs of stones that had got out of position by the Health Department of the Municipality is no proof of repair with the intent of the definition of "public street" in sec. 3, clause 10 of Bom. Act III of 1888, but comes more appropriately under sec. 61 (D), the Corporation having to make many sanitary provisions "and generally the abatement of all nuisances." (*The Municipal Commissioner of Bombay* vs. *Vinayak Ramchandra.* Bom. H. C. Cr. Ruling No. 58 of 1895.)

(14) "Tax" shall include any toll, rate, cess, fee or other impost leviable under this Act.

This is new, and is taken from the Bombay City Act, 1888, section 3 (*p*) which defines tax "as including any impost" under that Act.

Money payable under contract to collect tolls is not a toll.—Money due under a contract entered into with a Municipality for the right to collect tolls in consideration of a money payment does not fall within any of the provisions of section 269 of the District Municipalities Act, 1884 which provides that fees tolls &c. are recoverable as taxes, and a contractor who fails to pay what is due under such a contract cannot be convicted and fined under that section. The fact that the accused has had assigned to him the right to collect the tolls, in consideration of a money payment made by him to the Municipality, does not make the money payable by the accused to the Municipality under his contract a "toll" within the meaning of the section. I. L. R. 22 Bom. 709 followed. (*Abdul Aziz* vs. *Cuddapah Municipality*, I. L. R. (1903) 26 Mad. 475.)

(15) "Nuisance" shall include any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smelling or hearing, or which is or may be dangerous to life or injurious to health or property.

This is taken from the Bom. City Act, section 3 (*z*).

It was considered necessary for Municipal purposes to have a separate definition to the existing one in section 268 of the Indian Penal Code. This definition is very much wider and would include nuisance cases which would not come under the Penal Code.

The Madras Act, (IV of 1884) adds "of the public or the people in general who dwell or occupy property in the vicinity or persons who have occasion to use any public right."

Building even if erected under Municipal sanction may nevertheless be a nuisance for which a suit may be brought.

Nuisance, when a wall may be:—Propriety of order of partial demolition—Feasibility of other remedial measures—Calcutta Municipal Act, (Beng. III of 1899) *s.* 632. The words "any nuisance" in s. 632 of the Calcutta Municipal Act mean any nuisance as defined in s. 3 (29) thereof. The definition, though wider than that of a "public nuisance" at the common law, does not extend to the inclusion of all private nuisances. *Bhagwan Das* v. *Rash Behari Mullick*, 14 C. W. N. 637, explained. The erection of a wall, however high, on one's own land very close to the dwelling-house of a neighbour, in order to prevent him from acquiring a right of easement, is not in itself, a nuisance under the Calcutta Municipal Act, but where the evidence shows that it is, or is likely to be, injurious to the health of the residents of the adjoining tenements and of the public inhabiting the neighbourhood, by propagating the seeds of consumption and typhoid, it becomes a nuisance under the Act. Where, however, the only matter which causes a wall to be a nuisance is not its height but the accumulation of filth at the bottom and want of space to clear the drainage between it and the adjacent house, the Magistrate, instead of ordering its reduction in height, should consider whether the nuisance cannot be abated by the adoption of other remedial measures. The use of the Act, for the purpose of interfering in any way with the rights of private ownership, beyond the limited powers given to the Corporation by it for the necessary protection of the public and the enforcement of proper sanitation, is much to be deprecated. The case was sent back to the Magistrate with certain suggestions as to getting rid of the nuisance without interfering with the height of the wall. (*Khagendra Nath Mitter* v. *Bhupendra Narain Dutt.* (1910.) I. L. R. 38 Calc. 296.)

Putting up posts to prevent wheel traffic passing through private land, not a nuisance.—The owner of a *busti* put up certain posts which had the effect of preventing the wheel traffic passing through the *busti* from east to west and from north to south, leaving the opening on to the main road open and free at all times for any cart which had business in the *busti* and could go all over it and all round it and out again by the same passage by which it came in, but the cart could not get in and out by the shortest route as it had to go back by the way it came in. *Held*, that, although it might be inconvenient to the municipal servants and although it might add to the expense of cleaning the *busti*, the act of the owner cannot in any way interfere with the effective cleaning of the *busti*, which it is necessary to establish before it can be held to be a nuisance. (*Narendra Nath* v. *Chairman, Corporation of Calcutta*, 1910, 8 Ind. Cases 17. 15 C. W. N. 100.)

Nuisance by breeding mosquitoes.—Bill No. I of 1913 proposed with a view to the prevention of malaria, to add to the definition in the Bombay City Act the words "and also includes the provision by any Act, or omission of facilities for the breeding of mosquitoes": but after discussion in Council this was omitted from Bom. Act, VI of 1913 which provided for various amendments.

(16) "Dangerous disease" shall mean cholera, plague, small-pox, and any endemic, epidemic, or infectious disease by which the life of man is endangered.

This is taken from the Bom. City Act, section 3 (*aa*) with the addition of the words "plague, small-pox."

(17) "Vehicle" shall include bicycles, tricycles and automotor cars, and every wheeled conveyance which is used or capable of being used on a public street.

This corresponds very nearly with the definition in section 3 (*q*) of the Bom. City Act, except that here "bicycles, tricycles, automotor cars" are expressly included.

(18) "Public securities" shall mean—

(*a*) securities of the Government of India,

(*b*) stocks, debentures or shares in Railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council,

(*c*) debentures or other securities for money issued by or on behalf of any local authority in exercise of powers conferred by an Act of a legislature established in British India, or

(*d*) a security expressly authorised by any order which the Governor in Council makes in this behalf.

This is taken from Act VI of 1890, section 4, (3) (*a*).

(19) In Sind, the words, "***Sind Official Gazette***" shall be deemed to be substituted for the words "***Bombay Government Gazette***" wherever they occur in this Act.

See also "the Bombay General Clauses Act, 1904," and the general definitions of the words given therein and which are applicable to this Act; such as :—

(20) "Writing" and "written" include printing, lithography, photography, engraving and every other mode in which words or figures can be expressed on paper or on any substance.

(22) "From" and "to," when used with reference to a series of days or other periods of time, respectively, exclude and include the first and the last of the days or other periods in such series.

CHAPTER II.—CONSTITUTION OF MUNICIPALITIES.*

(1) Municipal Districts.

[1]Delimitation of Municipal districts.

4. (1) Subject to the provisions of sections 6, 7 and 8,[2] the Governor in Council may from time to time, by notification in the ***Bombay Government Gazette***, declare any[3] local area to be a municipal district, and may from time to time, by a like notification, extend, contract or otherwise alter the limits of any municipal district, or declare that any local area shall, from a date to be specified in the notification, cease to be a municipal district.

[1]Limits to be specified in notification.

(2) Every such notification constituting a new municipal district, or altering the limits of an existing municipal district, shall clearly set forth the local limits of the area to be included in or excluded from such municipal district, as the case may be.

(3) It shall be the duty of the Municipality in every municipal district already existing, and of every Municipality newly constituted under this Act, and of every Municipality whose local limits are altered as aforesaid, to cause, at their own cost, to be erected or set up,[7] if and when so required by the [5]Collector, and thereafter to maintain, at their own cost, substantial boundary marks of such description and in such positions as shall be approved by the Collector, defining the limits or the altered limits of the municipal district subject to its authoritiy, as set forth in the notification.

[4]Erection and maintenance of boundary marks.

(4) When any local area ceases to be a municipal district, the Municipality constituted therein shall cease to exist, and the property and rights vested in any such Municipality shall, subject to all charges and liabilities affecting the same, vest in His Majesty, and the proceeds thereof, if any, shall be expended under the orders of the Governor in Council for the benefit of the local area in which such Municipality had jurisdiction.

[6]Property and rights of Municipality which has ceased to exist to vest in Government.

[8]Constitution of Municipalities.—For the latest expression of the policy of Government see the G. R. set out in the Preface to this edition.

Government have of recent years abolished a large number of the petty municipalities, and have formed them into 'notified areas' which correspond to Town Panchayets in other parts of India.

As to village Panchayets see para. 37 of the Resolution. Sanitary Committees which had been established in the Presidency had not proved a successful experiment in local self-Government.

In England "the borough" is a city or town to which the Municipal Corporations Act 1882 (45 and 46 Vic. c. 50) applies. Its area is defined by its charter, or by the provisional order or local Act altering the boundaries. In the latter 2 cases confirmation by Parliament of an order is necessary. The Municipal corporation is the body corporate constituted by the incorporation of the inhabitants of a borough or city. Incorporation is now obtained by the grant of acharter. The Municipal corporation is composed of the mayor, aldermen, and burghesses or citizens. The burgesses or citizens are those whose names appear for the time being on the burgess roll. If the borough is a city, the burgesses are styled citizens. A person is not deemed to be a burgess unless enrolled. The corporate offices are those of mayor, aldermen, councillors and elective auditors.

Every qualified person elected to a corporate office must, unless exempted by law, either accept the office or render himself liable to a fine. Acceptance is signified by the person elected making and signing a declaration. The declaration must be made and subscribed before the members of the council or the town clerk, within 5 days after regular notice of election. If this is not done the person elected is liable to pay to the council a fine of at least £25 or if a mayor £50. Until he has made the declaration the person elected must not act in the office. A person who acts in a corporate office before making his declaration, or without being qualified, at the time of making it, or after ceasing to be qualified, or after becoming disqualified, is liable to a fine not exceeding £50, but if in fact he was enrolled as a burgess he is not liable merely because he was not entitled to be so enrolled.

Aldermen.—These are one third of the number of Councillors and are elected by the Councillors for six years. At the end of every 3rd year one half go out of office and their places are filled by election.

Mayor.—The mayor is elected by the council from among his aldermen, councillors or persons qualified to be. The term of office is for one year. The council may grant him such remuneration as it thinks reasonable. During his term of office he is *ex-officio* a justice for the borough and also a justice of the peace for the county in which the borough is situate.

The mayor is the chairman at all meetings and in his absence the deputy mayor may be chosen to preside; failing this an alderman or, in the absence of all aldermen, a councillor may be chosen as chairman.

County boroughs.—Certain cities and towns had obtained by Royal Charter the special privilege of being counties in themselves having their own sheriffs and being free from the jurisdiction of the officers of the county at large. In 1888 county boroughs of a population of at least 50,000 was for the purposes of local Government made an administrative county of itself and called a county borough, but for all other purposes it continues to be part of the county in which it is situate. Any borough of like population may be made a county borough by order of the Local Government Board confirmed by Parliament.

The effect of being a county borough is to give the mayor, aldermen and burgesses, acting by the council, all the powers, duties and liabilities of a county council, but to leave the constitution, election, proceedings &c. &c. of the county borough council to be regulated by the Municipal Corporation Act, 1882.

Origin of Municipalities.—The word "Municipality" derives its name from the Roman *municipium* a free town possessing the right of Roman citizenship, but governed by its own laws. Such a type of community was well suited to the political genius of the Anglo-Saxons, and towns formed on this self governing model and protected by royal or baronial charters sprung up rapidly in mediæval England. The important part played by these well ordered and peaceable trading communities in breaking down the power of the feudal barons and in reinforcing the weakness of the Crown is well known. They helped, says the historian Robertson, more than any other cause to introduce regular government, police, and arts. They are still the pillars of modern civilisation.

1 **Origin of section:**—Sub-sections (1), (2) and (4) are reproduced from section 5 Bom. II of 1884, slightly modified.

2 **Governor-in-Council:**—This in Sind means the Commissioner in Sind (sec. 3 (3).

3 **Local area:**—This area may or may not include the whole or part of a cantonment.

The Panjab Act expressly provides that "no Military Cantonment or part of a Military Cantonment shall, without the consent of the Governor-General in Council, be comprised in any such notification" declaring the local area a municipal district. So also the C. P. Act.

4 **Boundary marks.**—This clause is reproduced with some slight alterations from section 6, para. 2 of the old Act of 1884.

"*If and when so required by the Collector.*"—Under the old Act all municipalities had to erect these marks, but as a matter of fact many did not do so where the boundaries were so clearly defined by natural limits that the expense was unnecessary. The law now recognises this and leaves it to the Collector to decide wherever such marks are necessary.

5 **Collector:**—The definition of Collector is omitted in this Act.

Assistant or Deputy Collector.—"G. R. 8718 of 6th Nov. 1884 Rev. Dep. quotes the opinion of the Legal Remembrancer that under the Bombay General Clauses Act read with Revenue Code, sec. 10, in his taluka the powers and duties of an Assistant or Deputy Collector under the Local Boards Act also are the same as are conferred or imposed by law on the Collector, subject to appeal to the Collector, and to the power of the Collector to direct that certain duties shall not be performed or powers exercised."

This opinion will however probably not apply to this (Municipal) Act since sec. 173 (2) makes special provision for the delegation by the Collector of certain of his powers to the Assistant or Deputy Collector, thus negativing any implication that the Act intended his other powers under this Act could also be delegated.

6 **Abolished Municipalities.**—Under the Madras Act Government may pass such orders as it deems for the disposal of the property.

It was suggested that in the event of Government desiring to abolish any small municipality to which it might be advisable to apply the provisions of Chapter XIV, that instead of abolishing it (such abolition always carrying with it some sense of censure, or an idea that the place is of extreme insignificance), this section should provide for investing the Governor in Council with power to declare such local area to be a notified area and from that date to cease to be a Municipality. This suggestion was, however, not adopted.

Government liability for debts of abolished Municipality.—The following remarks of the Legal Remembrancer forms the preamble to G. R. No. 424 of 10th Feb. 1893, Gen. Dep.:—

Under section 5 (3) of Bombay Act II of 1884 when any local area ceases to be a municipal district the property and rights, vested in the Municipality vest in the Governor in Council subject to all charges and liabilities affecting the same.

"2. The Municipal Funds stand charged as before under Section 21 of Bombay II of 1884 with all costs in respect of contracts, and agreements made and expenses incurred by or on behalf of the Municipality.

"3 Beyond this there is no provision in the Bombay District Municipal Acts creating any liability for the debts or engagements of a Municipal Corporation.

"4. The assets only are liable, and I think the Government can be held l able only to the extent of those assets.

"8. Municipalities do not act as agents or servants of Government, or on behalf of Government, and it is not in their power to pledge the credit of Government. It is only so far as the Municipal property will go, that Government can be under any obligation to discharge the liabilities affecting the same, or expend the proceeds thereof for the benefit of the local area in which the Municipality had jurisdiction.

"10. Indeed I think that the rights of a dissolved Municipality would, in vesting in Government be subject to the charges and liabilities affecting the same, *i. e.*, would vest subject to a responsibility for the discharge, *from the proceeds thereby realised*, of all debts and liabilities incurred by the abolished corporate body.

"11. The local area cannot on the incapacity or insolvency of its Municipal Corporation, claim, as of right, to transfer to the general, public any liabilities incurred on its account.

"12. I think there can be no objection, if persons voluntarily come forward with contributions to discharge the debts incurred by a municipality, to accept those contributions and apply, them, as desired by the persons making them.

"13. There can be no illegality in accepting voluntary subscriptions for any purpose that is not opposed to morality or public policy.

Utilisation of balances of abolished Municipalities:—When a municipality is abolished the balance of its fund cannot be made over directly to another body as is proposed. The balance must be credited to Government as a Provincial receipt, and any grant required must be paid from the Treasury and appear in the accounts as Provincial expenditure. The balances of the three municipalities in question, after all claims on the municipality have been satisfied, should accordingly be now paid into the Treasury.

2. In the case of Bareja, sanction is required to (1) Provincial expenditure estimated at Rs. 3,000 on a culvert, and (2) a grant to the Sanitary Committee of a sum equal to the balance of the municipal fund after deducting Rs. 3,000. The second of these proposals is sanctioned. As regards the first, however, it would clearly be incorrect to construct, as a Provincial work, a culvert on a Local Fund road. The proper course is for the Local Board to undertake the construction, on condition that, if it does so, a lump sum grant of Rs. 3,000 will be made from Provincial to Local.

3. A lump sum grant equal to the balance of the municipal fund of Kasandra may be made to the Sanitary Committee of that village.

4. As regards Uvarsad, the proper course seems to be to make a grant equal to the whole amount credited to Government (apparently Rs. 1,016) to the Ahmedabad Local Board on condition that it shall be expended in the village of Uvarsad; and this course is sanctioned.

5. In the case of municipalities which may hereafter be abolished, the presidents of the municipalities should draw a cheque on the last day of the existence of the municipality in favour of the Collector for the whole amount of the balance which, according to law would vest in Government. (G. R. No. 646 of 10 February 1896, Gen. Dep.)

G. R. No. 6109 of 7 Nov. 1898, Gen. Dep., sanctioned the arrangement that the unspent balance of the Jerruck Municipality which was abolished, be vested in the Collector of Karachi and Assistant Collector, Jerruck on the understanding that the money be invested in Government securities and the interest spent on the conservancy of the town.

Recovery of arrears due to abolished Municipality.—Though the property and rights of the Municipality vest in His Majesty, Government have not the special powers of a municipality to recover arrears, which can only be done by a civil suit. (G. R. 5430 of 4th Sept. 1907, G. D.)

Introduction of the Village Sanitation Act:—It appears probable that the establishment of Sanitary Committees on advantageous terms in the places where it is proposed to abolish municipalities will be facilitated if the arrangements for the introduction of the Committees are settled, and the consent of the inhabitants obtained, before the municipalities are abolished. It is also undersirable that there should be a long interval between the abolition of the one body and the establishment of the other. Consequently, all the preliminaries to the introduction of the Village Sanitation Act required by Government Circular No. 45, dated 5th

January 1894, should be arranged in future before applications for the abolition of municipalities are made to Government, and the arrangements proposed should be reported with the application. (G. R. No. 3323 of 29th July 1896, Gen. Dep.) Collectors are empowered to write off in the case of abolished municipalities, irrecoverable arrears up to Rs. 500. (G. R. 872 of 7th Sep. 1909 Rev. Dep.)

[1] Municipal districts to be periodical or permanent.

5. Municipal districts constituted under section 4 may be either periodical or permanent.

1 **Origin of section.**—The expression "periodical" is substituted for "temporary" in the old Act. This is in accord with the provision made by section 6 that such municipal districts exist for *recurring* seasons and are not merely *temporary* as before.

Under the Panjab Act municipalities are divided into 1st and 2nd class.

[1] What local areas may be declared to be periodical Municipal districts.

6. Any local area in which a periodical fair is held or which is visited periodically by pilgrims, together with any neighbouring local area to which the people attending such fair or the pilgrims resort whilst such fair or pilgrimage lasts, may be declared a periodical municipal district at and throughout certain specified recurring seasons.

1 *Origin of section.*—This is a re-enactment of section 8 of Bom. II of 1884 except the last 7 words. The object of this section is that any part of a district in which special sanitary measures are needed may be subjected to municipal law administered by a competent body of councillors, many of whom may also be members of the taluka local board.

Areas which are constituted temporary municipal districts only should not be excluded from the village groups within which they are comprised for the purposes of the Bombay Local Boards Act, 1884 (Bom. Act I of 1884) (G. R. 8030 of 10th October 1884, Rev. Dep).

See section 72 as to taxes levied by a municipality on pilgrims visiting a shrine within municipal limits.

See section 14 (2) as to the constitution of, and the powers and duties to be exercised by a periodical municipality.

Recurring seasons.—The last 7 words are intended to avoid the necessity of each year declaring the Municipality anew. (See also note to sec. 14.)

New Markets and Fairs.—See Bombay Act IV of 1862, which prohibits the establishment of any new market or fair without permission in writing from the District Magistrate. It recites that the establishment of such new markets or fairs in the neighbourhood of places where markets or fairs have been previously established leads to disputes and not infrequently occasion breaches of peace and serious inconvenience to the frequentors of such markets and fairs.

District Police Act. Application of—to certain areas.—G. R. No. 474 of 4th February 1891, Gen. Dep., called for reports as to the advisability of the application of section 45 of the District Police Act, 1890 (District Magistrate to take special measures to prevent outbreak of epidemic at fairs etc.,) to those places in which it had been usual to establish temporary municipalities. The reports having been received, G. R. No. 3748 of 22nd October 1891 states:—The Commissioners are unanimous in their view that section 45 of the Police Act is more workable than the constitution of temporary municipalities at places where *jatras* and other similar assemblages are held. Each such place must be considered on its merits.

[1] What local areas may be declared to be permanent municipal districts.

7. (1) Any local area which comprises—

(*a*) a city, town or station or two or more neighbouring cities, towns and stations, with or without any village, suburb, or land adjoining thereto, or

(*b*) a village or suburb or two or more neighbouring villages and suburbs,

may be declared a permanent Municipal district:

Provided that, except—

(*a*) [2]in the case of hill-stations, or

(*b*) for exceptional reasons, which shall be clearly set forth in the proclamation under section 8 and in the notification issued under section 4,

it shall not be lawful—

(i) to include any city, town, station or suburb in a permanent municipal district with any other city, town, station or suburb from which it is separated by an extent of more than one mile of land unoccupied by houses; or

(ii) to constitute any municipal district in any area of which the [3]population is less than two thousand.

Naming of municipal districts comprising two or more places.

(2) When two or more places bearing different names are formed into one municipal district, the name of the municipal district shall be determined by the Commissioner.

1 **Origin of section:**—This section is a re-production of section 9 of Bom. II of 1884, with some slight alterations, and clause (*a*) is new.

It is often difficult to ascertain the real wishes of the inhabitants of a town regarding the introduction of the Municipal Act, and therefore necessary for the Magistrate and local officers to exercise extreme care before recommending it. They should endeavour to discover if the wish expressed for the measure is real and general, and also if there be any large body of influential persons who are—it may be silently, but resolutely—opposed to the Act.—*Govt of India No.* 830, *March* 31*st*, 1854.

A suburbs consisting of a private enclosure with buildings would be "land adjoining thereto" within the meaning of this section, and could as such be included in a municipal district.

Apparently, as the word 'village' is omitted from the proviso, there would be no bar to a village, however, populous being included in the municipal district even without giving special reasons, but as the terms 'city' town 'suburb' 'village' are not defined in the Act, it might be difficult to say when a village was not at least a suburb, which is defined by Webster to mean "An outlying part of a city or town; a smaller place immediately adjacent to a city."

2 **Hill-stations**:—This provision is obviously necessary, *vide* section 14, which makes special provision for municipalities at hill-stations and in other exceptional cases. Under section 144 of the Punjab Act, a municipality in a hilly tract may make further special bye-laws.

3 **Population qualification.**—A proposal to raise the population qualification to 5,000 was considered by the Special Committee, who were of opinion that no change in this behalf should be made, especially having regard to the fact that there were already municipal towns having less than the proposed minimum, and no sufficient cause was shown for disfranchising them.

It was further suggested that the 2,000 minimum should be confined to towns, the head-quarters of a taluka or within a mile of a railway station, and the minimum raised to 4,000 in all other areas, as it was contended that, except in such taluka or railway towns, the population was only agricultural on whom the additional burden of municipal taxation was not desireable to be laid. This however was, for the aforesaid reason, also negatived.

See Chapter XIV, under which such towns may be formed into "notified areas."

In 1871, Government did not consider it expedient to apply the Municipal Act to towns with a less population than 5,000, except under special circumstances (*G. R. No.* 1758, *June 30th*, 1871), but since then towns of considerably less population have made such advances that the minimum, it has been considered, can well be decreased to 2,000.

Although the fact that the population of a town was less than 2,000 would be ordinarily a bar to the constitution of a municipality in it, yet a subsequent decrease in population would not necessitate the abolition of the institution. But the policy of maintaining municipalities in very small towns is questionable. Unless the incidence of taxation is high, it is improbable that sufficient income to make municipal administration effective will be legitimately obtained, and if the income is small, an undue proportion of it is sure to be absorbed in the cost of establishment. His Excellency the Governor in Council would not willingly see any municipalities from which the people derive substantial benefit abolished, but where the people of any town are so few that a municipality cannot be kept up in it without appreciably curtailing the means of the poorer classes, and where a large proportion of the income must be spent on establishment, the burden on the people is likely to outweigh the advantage they derive. (G. R. No. 1297 of 11th April 1882, Gen. Dep.)

It seems to the Governor in Council desirable on sanitary, financial and other grounds that all towns containing a population of 4,000 persons and upwards should be constituted municipalities. Even towns with less than 4,000 inhabitants may, with special reasons, be recommended for the establishment of a municipality. (G. R. No. 4462 of 17th December 1888, Gen. Dep.)

Detailed information should invariably be furnished to Government concerning the population, condition, and trade of the towns in which it may be proposed to establish municipalities. (G. R. No. 1463 of 12th April 1889, Gen. Dep.)

No preliminary steps should be taken in any case till full particulars have been given of the size and resources of any town to which it is proposed to apply the Act. (G. R. No. 1107, April 28th, 1871).

Municipalities of less than 2000.– It is now clear that for exceptional reasons, such can be constituted, but probably they would in these cases come under section 14.

8. (1) Not less than [2]two months before the publication of any notification declaring any local area a permanent municipal district, or[3] altering the limits of any such district, or declaring that any local area shall cease to be a municipal district, the [4]Governor in Council shall cause to be published in the [5]***Bombay Government Gazette***, in English, and in at least one of the local newspapers, if any, in the language of the district in which such local area is situated, and to be posted up in conspicuous posts in the said local area in the language of the said district, a proclamation announcing that it is proposed to constitute such local area a municipal district, or to alter the limits of the municipal district in a certain manner, or to declare that such local area shall cease to be a municipal district, as the case may be, and requiring [6]all persons who entertain any objection to the said proposal to submit the same, with the reason therefor, [7]in writing to the [8]Collector within two months from the date of the said proclamation,[9] and whenever it is proposed to add to or exclude from a municipal district any inhabited area, it shall be the duty of a Municipality also to cause a copy of such proclamation to be posted up in conspicuous places in such area.

[1]Permanent municipal district.

[10](2) The Collector shall, with all reasonable despatch, forward every objection so submitted to[11] Government.

(3) No such notification as aforesaid shall be issued by the [4]Governor in Council unless the objections, if any, so submitted are, in his opinion, insufficient or invalid.

1 **Origin of section.**—This section is a re-enactment of section 10 of Bom. II of 1884 with some alterations to be noted. This procedure is to be observed when abolishing a periodical municipal district also.

2 **Two months.**—The time for the publication and for sending in of objections is limited to *six weeks* in the Panjab, Madras, N.-W. P. and Oudh, Municipal Acts; and three months under the C. P. Act.

3. **Altering limits of Municipality.**—See sec. 4 (1). This implies power to increase the local area by the inclusion of certain additional lands or villages. Note 1 sec. 7.

4. **Governor in Council.**—This in Sind means the Commissioner in Sind (section 3 (3)).

5. **Government Gazette.**—This in Sind means the *Sind Official Gazette* (section 3 (19)).

6. **All persons.**—Under the Panjab, Madras, N.-W. Provinces and Oudh and Central Provinces Acts, this is limited to "inhabitants" which in the former Act is defined to include "any person ordinarily residing or carrying on business, or owning or occupying immoveable property in any municipality"; and in the latter "any person who shall have been ordinarily residing in any municipality for a period of six months or upwards." The Central Provinces and, N.-W. Provinces Acts do not define the term.

7. **Writing.**—See note at end of section 3 for definition.

8. **Collector.**—See note 5 to section 4. Collector is here substituted for "a Secretary of Government" in the old section.

9. **Proclamation when and how posted.**—This concluding sentence was added as it appears to be a consistent extension of the principle of the section, which is, that inhabitants of any area affected by a proclamation of the nature in question should have the best possible opportunity of becoming acquainted with it before any change is made.

10. **Objections to be sent to Government.**—Formerly the objections were to be sent to "a Secretary of Government" direct; now, in order to save time, as the objections have, in all cases, to go to the Collector, this section recognises this and provides for his sending them on to Government.

11. **Government.**—Under the repealed General Clauses Act this meant 'the Governor of Bombay in Council.' The expression used in the new Act, (Bom. I of 1904) is "Local Government."

(2).—Municipalities.

9. In every municipal district there shall be a municipality and every such municipality shall be a body corporate by the [2]name of "The Municipality of—", and shall have [3]perpetual succession and a [4]common seal, and may [5]sue and be sued in their corporate name.

[1] Constitution and incorporation of Municipalities.

1. **Origin of section.**—This is the first part of section 11 and 15 Bom. Act II of 1884.

2. **Name of Municipality.**—In England it is "The Mayor, Aldermen, and Burgesses of the Borough of ." If the borough is a city, the burgesses are styled citizens. "When a corporation is erected, a name is always given to it, or, supposing none to be given, will...attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation in other respects. But some name is the very being of its constitution, and though it is the will of the Sovereign that erects the corporation, yet the name is the knot of its combination, without which it cannot perform its corporation functions"—1 Steph. Com., 11.

3. **Perpetual succession:**—"Corporation or body politic, artificial persons established for preserving, in perpetual succession, certain rights which being conferred on natural persons only, would fail in process of time.....It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and

mouthpiece; it has neither soul, nor tangible form, so that it can neither be out-lawed nor..... arrested; it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law." (WHARTON'S LAW LEXICON.)

4. **Seal.**—Each Municipality should have its own seal which should be kept in the custody of the President or such officer as he may direct. Under the Bombay City Act, it is to remain in the custody of the Municipal Secretary, and is not to be affixed to any contract except in the presence of two members of the standing committee who are to affix their signatures to the contract, besides the other witnesses to the execution of the contract. This Act is silent as to the person by whom, and the mode in which, the common seal is to be fixed. This should be provided for by each Municipality by rules under section 46 (*c*). (See sec. 40.) as to what contracts are to be sealed.

A corporation may change its seal at pleasure, and even make use of the seal of an individual so long as the seal which is actually used is applied as the seal of the corporation for the time being. See *Yarmouth Corporation* v *Cooper*, Godb, 439; *Cooch* v *Goodman*, 2 Q. B. 550, 593; *Gray* v *Lewis*, L. R. S. Eq. 526.

"It is a general rule that a corporation must contract by its common seal, but wherever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed." (WHARTON.)

5. **Suits by or against Corporations.**—See the Code of Civil Procedure, 1908, 1st Schedule Order XXIX. Rule 1 provides that "1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case." "2. Subject to any statutory provision regulating any process of service, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or
(*b*) by leaving it or by sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

A corporation *must* sue in its corporate name (*Ram Das Sein* vs. *Stephenson*, 10 W. R., 366). It cannot be sued through its agent (*Nobin Chander Paul* vs. *Stephenson*, 15 W. R., 534). See section 167 as to notice of suit against any municipality or any officer, &c.

A municipal committee is not a "public servant," and therefore it may be prosecuted without the sanction of Government (*Empress* vs. *Municipal Committee of Calcutta*, I. L. R., 3 Cal., 758).

Sue and be sued:—"A corporation, as a general rule, can be guilty of no crime in its corporate capacity. Yet it is liable in certain cases to an indictment, as where it allows a bridge, the repair of which belongs to it by law, to fall into decay. And it is capable of suing or being sued for breach of contract, and for many other kinds of civil injury, as for example a libel."—3. Steph. Com. 13. It must always appear in Court by attorney, for it cannot appear in person, being, as Sir F. Coke remarks, invisible and existing only in intendment and consideration of law."—Wharton.

"A corporation may (i. e., in certain cases) be proceeded against criminally as well for a misfeasance as a nonfeasance.—*Reg.* v *The Birmingham and Gloucester Railway Company*, 3 Q. B. Rep., 223: *Reg.* v *Scott*, 3 Q. B. Rep., 547: *Reg.* v *The Great North of England Railway Company*, 9 Q. B. Rep., 315."—*Empress* v *Corporation of Calcutta*, I. L. R. 3 Cal., 762.

An action for malicious prosecution will lie against a corporation.—*Edwards* v *The Midland Railway Company*, 6 Q. B. D., Rep., 287.

"We shall briefly repeat here a most important principle of corporation law which has before been.....adverted to, namely, that a corporation is not responsible as a corporation for acts which, though colourably corporate acts, are not within the competency of the corporation to perform: in such case the individuals who take part in the pretended corporate acts are personally responsible. Thus when the majority concurred in placing on the corporation books a resolution libelling a Court of Justice, the individuals comprising the majority were held liable to a criminal information; and so in cases of contract."—*Grant on the law of Corporations*, p. 281.

[1]Municipalities to consist of elected and nominated councillors.

10. (1) Except as is [2]hereinafter otherwise provided, every such Municipality shall consist of—

(*a*) elected councillors;

(*b*) nominated councillors, [2]if any, that is to say, such [3]persons, as from time to time

[4](i) are by name appointed in this behalf by, or

[5](ii) are executing the functions of any office from time to time notified in this behalf by the Commissioner.[6]

[7]Provided that the number of elected councillors shall be not less than one-half of the whole number [8]inclusive of the president, and that not more than one-half of the nominated councillors shall be [9]salaried servants of Government.

In specified proportions.

[10](2) Any vacancies due to failure to elect the full number of elected councillors which, under this section, might be elected, may, notwithstanding anything in this Act contained, be filled up by nomination by the Commissioner.

1 **Origin of section:**—See para. 6 of G. R. set out in the Preface to this edition. Much of this section is a reproduction of section 11 of the old Act, modified by reason of the changed nomenclature from "Commissioners" to "councillors," and other changes to be noted in their places.

See Part II, Appendix A for rules, &c., as to elections of councillors as representative members of Local Boards.

In England the council of the borough consists of the mayor, aldermen and councillors. The council exercises all powers vested in the corporation by the Act or otherwise. It is not only the executive of the corporation, it is the soul of the corporation, occupying a much more independent and autocratic position than the directors of a company for instance

Excepted municipalities:—There are (1) Hill station municipalities, (2) Exceptional municipalities and (3) Periodical municipalities. See section 14 (2).

2 **If any:**—From this it appears that there is no limit to the number of elected councillors, who may form the entire Board. (See note 2, section 20.)

The Act does not prescribe any qualifications for nominated councillors, but they are subject to the general disqualifications, sec. 15.

3 **Person:**—This includes a company or association or body of individuals whether incorporated or not. (Bom. General Clauses Act 1904, sec. 3 (35).)

4 **Appointed councillors:**—Collectors, when submitting the list of members for nomination, should mention the names as well as the official designations of Government servants. (G. R. No. 10183 of 26 Dec. 1884, Rev. Dep.

5 **Ex-officio councillors.**—This clause was inserted to enable Government to direct in certain cases that an officer of Government shall, by virtue of his office, always be a member of a municipality. Whenever such an officer is transferred to another district, formerly, application had to be made in each case, and notification issued. This is now obviated. If such a councillor is transferred he ceases to be "executing the functions of the office" and *ipso facto* ceases to be a council or, the officer who takes charge of his office under Government taking his place in the council as *ex-officio* councillor. See the case discussed in note 11 sec. 23. The words in sec. 23 (8) "his becoming incapable of acting in such office" apply to such a case as much as to one absent without leave. See note 21 sec. 23.

Sec. 17 of the Bom. General Clauses Act 1904 makes provision on their lines but the section does not apply to this Act.

6 **Commissioner.**—Under the old Act, this power was vested in "the Governor in Council or any officer whom he authorises in his behalf," but as H. E. the Governor in Council was pleased to delegate to the Commissioners of Divisions all powers and duties of the Governor in Council under this section, (G. R. No. 3046 of 27th Aug. 1884, Gen. Dep.), the amendment in the Act, gives permanent effect to the former practice.

The Decentralisation Commission suggested that the appointment of nominated members and chairmen of municipal councils, and the gazetting of elected members and chairmen should be entrusted to the Collector ordinarily, and to the Commissioner in the case of cities.

7 **Proportion of elected.**—In 1884 when this proviso was first introduced it was the subject of much contention, inasmuch as it was urged that in order to give municipalities some real independence, it was necessary that the elective members should represent a marked majority of the board; but on the other hand it was contended that while it was very desirable that the municipalities should be largely composed of independent and intelligent representatives of the popular movement, yet in the existing absolute inexperience of the elective system freedom of speech and thought was more likely to be developed by giving to boards independence in allotting their funds, framing their projects, and passing their budgets, than by making obligatory a large majority of elective members. It was however, pointed out that the elective *minimum* had only been fixed; the maximum might eventually consist of the entire board. This result was in the hands of the people when they showed themselves fit to be entrusted with this power.

The present Act makes a further concession to Local Self Government in that, assuming that only the elective *minimum* is adopted at the outset, and that a Government officer is appointed to be President, whereas Government formerly had the advantage where the total number of councillors exclusive of the President was even, or in the case of the board being equally divided by its leading representative having a casting vote, now whether the President be *ex-officio* or elected, the elective half may, by voting solid, always secure a majority.

Under this Act, it is to be observed that in every municipality, with special exceptions, at least ½ must be elected members, and the whole may be.

Under the C. P. and Panjab Acts, the members may be *entirely* nominated either by name or office, or *entirely* elected, or partly nominated and partly elected. In the Panjab, though no proportion is laid down in the Act, as a matter of fact, under the rules the elective system is in force in nearly every municipality, the exceptions being very rare and the elected members are not less than ⅔rds of the total number, except in Delhi where the elected are not less than ½, and in Simla there are 6 elected to 4 nominated members. But it is expressly provided that no alteration in the constitution of a municipality having the effect of reducing the proportion of elected members can be made, except (1) in compliance with the request of a majority of the electors for the time being, or (2) for some reason the Government may deem to affect the public interests.

The N.-W. P. and Madras Acts give partly appointed and partly elected members, but the N.-W. P. Act fixes a maximum of ¼ of appointed members; and the Madras Act, section 13, provides that in municipalities where committees are partly elected, the number shall be ¾ of the whole, unless Government otherwise directs, and also that for the first 3 years of a municipality the members may be all nominated.

Under the Bengal Act of 1884 the proportion of elected councillors is ⅔rds.

8 **Inclusive of President:**—The Special Committee state, "The word "inclusive has been substituted for "exclusive" as it stood in the old Act, as it was feared that the clause as originally framed might debar an elected councillor from being selected as President of a municipality composed of an equal number of "elected" and "nominated" councillors, except at the cost of placing the elected councillors in a permanent minority."

The result of this substitution is that the elected councillors may now always form a permanent majority, except when the President is a non-salaried servant of Government and a nominated councillor, for then he would have both a vote and a casting vote. Further, now if Government intend to appoint a nominated President, and to retain the elective *minimum*, the total number of councillors will have to be even. The alteration now makes it possible and legal to appoint an elected councillor as President, where the number of 'elected' and 'nominated' councillors are equal.

If it is intended that, in any municipality, the President should be appointed or *ex*-officio, the person whom Government intend to appoint must, in the first place, be appointed by the Commissioner as one of the nominated councillors, and included in the proportion here fixed, (G. R. No. 1422 of 10th May 1887, Gen. Dep.).

9 **Salaried servants of Government:**—See definition, section 3 (9). The maximum of salaried servants of Government is therefore ¼th of the whole municipality. In the C. P. Act, the maximum is ⅜th of the whole body, and in the Panjab Act ⅓rd, unless the Governor-General otherwise directs. Under the Madras Act, the limit is, with the one *ex*-officio member, ¼th. This proportion is maintained by sec. 15 (2) (*d*) of this Act.

10 **Vacancies:**—This clause is from the Panjab Act. Under the Bombay City Act, the Corporation may fill the vacancy, but if it fails to do so within 15 days after request to do

so, the Commissioner "shall appoint another day for holding a fresh election; and this applies also to failure to elect for a casual vacancy. Under this District Act no such provision is made for a second election, so that if the Commissioner does not exercise his option to appoint, there will be a permanent vacancy.

Under the English Act, the election must in the first place be held, otherwise the High Court may on motion grant a *mandamus* for the elect on to be held on a day appointed by it. This also in case the election becomes void. When there is an election, but no valid nomination, or less nominated than there are seats, the retiring councillors shall be deemed to be re-elected.

Under the Bengal Act, if within the time appointed the election fails to give the whole number to be elected, the Local Government may appoint councillors to complete the number. This seems to apply to by-elections also.

It should be noted that apparently the only case in which a fresh election takes place in the case of a general election, is when the District Judge directs under sec. 22 (3). Further, if a casual vacancy takes place it is obligatory to hold an election, *vide* sec. 18.

The Governor in Council may determine number of councillors: first proportion of elected and nominated councillors; and makes rules for regulating elections.

[1]**11.** (1) The [2]Governor in Council shall from time to time, generally or specially for each Municipality,—

[3](*a*) determine the number of councillors;

[4](*b*) fix, subject to the provisions of the last preceeding section, the proportion of the councillors, if any, who shall be nominated;

[5](*c*) make rules consistent with this Act, for

(i) fixing the dates and the time and manner of holding elections, general or casual, of councillors to be elected;

[6](ii) prescribing the number to be elected by the ratepayers, or by sections of the [7]inhabitants, or by public bodies or associations, if any, and the [8]qualifications of candidates and of voters other than as hereinafter provided;

[9](iii) preparing and revising the lists of voters from time to time, fixing the date after which no application for enrolment in any such list under preparation or revison shall be received, declaring the manner in which the right to vote of any undivided family, or any company or firm, or any other association or body of individuals, or any trustees of any building or land, being two or more in number, entered in such lists, may be recorded and exercised, and prescribing the restrictions, if any, on the number of votes which a voter may give;

[10](iv) determining the manner in which and the authority by whom any objection to such lists in regard to the names entered therein or omitted therefrom may be heard and decided, and to what judicial authority the appeals as to such entries and omissions shall lie;

[11](v) prescribing the date, subject to the provisions of sub-section (1) of section 13, for the publication of the Municipal Election Roll;

(vi) regulating generally such elections.

(2) The Governor in Council may from time to time delegate to the Commissioner any or all of the powers granted to the Governor in Council by clause (c), sub-clauses (i), (iii), (iv), (v) and (vi) of this section, subject to such restrictions or conditions, if any, as the Governor in Council may attach to the delegation.

1 **Origin of section.**—The first part of this sub-section is the first part of section 12 of Bom. Act II of 1884 modified and extended. Nearly all the other half of this section is new.

When Bom. Act II of 1884 was first introduced in the Legislative Council objection was taken to the very large discretional powers reserved to Government under the provisions of this chapter. But on this point the following remarks made by the Viceroy in the debate in the Central Provinces Local Self-Government Act, the provisions of which give much wider powers than this Act to the Local Administration, were pointed out as being useful. "Now, it is very important that all persons who have to consider Bills of this description should bear in mind that the provisions which are contained in measures which will form part of the law of the land, are hard and fast provisions which cannot be altered without referring again to the Legislature and passing a new Act. Now in a matter of this kind, especially at its commencement, it is very undesirable to lay down more hard and fast rules than are necessary. What you want is that the system should be elastic and that you should ascertain by practical experiment what modes of self-government are most suited to the requirements and idiosyncracies of the people in different parts of the country, for if you tie the hands of Government too tight by the regulations of an Act of legislation, that elasticity which is so desirable in order to arrive at the system best suited to fulfil the wishes and meet the requirements of the country will be altogether lost, and the Government will find itself bound whether the measure is found in practice to be suitable or not, to enforce the provision of the law, or else to go through the long and complicated process of again referring the matter to the Legislature."

It was then stated in the discussion on the then Bill that the size and importance of municipal districts, and the condition and civic advancement of their inhabitants vary so greatly that no hard and fast rule would be safely laid down in this Act on these various points referred to in clauses (*a*) and (*b*). So also the framing of rules for regulating elections and the qualifications of candidates and voters has been left, as in the present District Municipal Act to Government, (clause *c*). The constituency to be invested with the franchise must in the first instance, of necessity, be a small one; but as the system becomes more known and with the spread of education and enlightenment, the privilege of electing a representative to the municipal commission of their native place becomes more and more appreciated by the people, the right of voting will have to be more and more extensively conferred. Again the qualifications which will give a suitable body of electors in one town may be inapplicable to the circumstances of another. To allow for such elasticity as will thus be necessary in provisions concerning the qualification of voters, the only resource is to empower some independent authority like the Governor in Council from time to time to determine the classes of persons who shall be entitled to the franchise.

Under the N. W. P. Act, the District Magistrate is to convene a meeting of certain persons to determine the system of election, and the Local Government, after taking their proposals (if any) into consideration, is to make rules on the subject.

Extention of the elective system:—In 1908 the Government published the following G. R. 4614 of 16 July 1908 G. D.

RESOLUTION.—The Governor in Council considers that the time has now come when a further advance may be made in the direction of increasing the representative element in the District Municipalities in the Bombay Presidency, and freeing them from official control. The success which has attended the administration of those of the municipalities in which the management of affairs has been left, to the greatest degree, in the hands of non-official members warrants the belief that the enlargement of the privilege of self-government will induce private individuals to take a greater and more practical interest in the administration of local affairs, and though the withdrawal of official guidance may,

at first, and in some instances, result in a temporary abatement of efficiency, it may be expected that, when a wider field is opened, men of ability and public spirit will come forward, who when they have gained the necessary experience, will prove fully competent to manage municipal business. At the same time the necessity of relieving over-burdened district officers of some part of their heavy duties is daily becoming more apparent; and in no way can relief be afforded so speedily, and with so much advantage, as by transferring the responsibility for municipal administration to non-official members of the community.

2. The Governor in Council has therefore decided that, in future, as a general rule, two-thirds of the members of a District Municipality shall be elected. This rule applies, for the present, only to municipal areas with a population of at least 15,000, and is subject to any exclusions which may be recommended by the Commissioners on special grounds.

3. The privilege of selecting their own president will also be conferred generally on all Municipalities not excepted for special reasons. The selection must be approved by two-thirds of the whole body of Councillors, whereupon the appointment will be made by the Governor in Council in accordance with the wishes of the Municipality.

4. The Governor in Council has carefully considered the question of the representation of minorities. A system of communal representation, though attractive at first sight, is beset by practical difficulties, and is also open to the objection that it may stir up sectional animosities. The power reserved to the Governor in Council of nominating one-third of the Councillors will, as hitherto, be used for the purpose of securing the representation of those classes who, for any reason, are unable to elect candidates of their own. The desired object may also be obtained, in part, by a rearrangement of the wards, or by assigning two Councillors to a ward and giving each elector one vote."

Note.—See further notes to sec. 177.

The Commissioners were accordingly directed to revise the constitutions of the Municipalities in their Divisions on the lines indicated above, with the least possible delay, and to frame their proposals with an inclination to the greatest possible extension of the privilege of representation.

For the latest expression of the policy of the Government of India see the Resolution printed with the Preface to this edition.

Ward elections.—The power of sanctioning the distribution of wards and the methods of election in District Municipalities is reserved to Government under section 11 of the District Municipal Act, 1901. In exercising this power Government realize that it will be impracticable to insist on rigid uniformity in allocating the new elective seats. The local circumstances of each body will be duly considered.

The Governor in Council desires, however, that the additional elective seats should be so allotted that minorities that have hitherto not been represented, or inadequately represented, may have a reasonable chance of securing due representation among the elected members. Government will be prepared to sanction schemes based on local conditions which have drawn up with this object in view. In some cases it may be necessary to re-distribute the wards, while in others the desired result may be secured by allocating the additional seats to existing wards, or by a combination of these two methods. In all wards for which more than one member is to be elected it will be necessary to introduce one of the well-known systems of voting for securing minority representation, such as cumulative voting, or the system under which each voter has only one vote irrespective of the number of seats allotted to the ward. Of these two systems the Governor in Council prefers the latter. (G. R. 5510 of 20th Oct. 1909.)

Annual Administration Reports—note of elections:—By Memo. No. 2-85, Home Department, dated 26th July 1887, the Government of India directed that in the Annual Administration Report of Local Boards and Municipalities on occasions when elections are held, a short account of the elections should be given showing the number of voters who were entitled to vote in the particular electorial unit and the number of voters who actually did record their votes. (G. R. No. 2617 of 1st Sep. 1887, Gen. Dep.).

2 **"Governor-in-Council":**—This in Sind means the Commissioner in Sind, save in respect of City Municipalities and save in contravention of any general rules issued by the Governor in Council under this section (*vide* sec. 3 (3)). * * * By G. R. 7651 of 13th Nov. 1912, the Commissioner in Sind has been delegated the powers also in respect of City Municipalities. (See note sec. 3 (3).

No provision is made for the manner in which all these matters are to be published though as a matter of fact the notifications regarding the constitution of each municipality is published in the Bombay Government Gazette for the Presidency Proper and in the Sind Official Gazette for Sind. Sec. 69 of the Local Boards Act provide for publication in the Official Gazette. It is not necessary that there should be any publication prior to the orders and rules having full effect. Compare sec. 14.

Power to alter, amend orders, etc.—By section 21 of the Bom. General Clauses Act 1904. "Where a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exerciseable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or by-laws so issued."

The Panjab Act, section 9, expressly provides that the Local Government may reduce the number of councillors; and section 5 (2) after providing that the Local Government shall determine the constitution of each municipality, contains a proviso that no alteration having the effect of reducing the proportion of elective councillors can be made except, (1) in compliance with the requisition of a majority of the electors, or (2) for some reason which the Local Government may deem to affect the public interests.

The Madras Act, section 12, provides that the Governor in Council "may by notification, accompanied by a statement of his reasons for making the same, cancel or modify" his declaration as to the constitution of municipalities, but no such notification as to cancelling or modifying or declaration regarding the proportion of elective members or whether the chairman is to be appointed or elected shall be issued without previous intimation to the municipality * * * with his grounds thereof or without consideration of its explanations and objections, * * * and no such cancellation, &c., shall come into force until after 3 months.

The Bengal Act (sec. 8), after giving power to the Local Government to declare the Act applicable to any town, &c., and the number of Commissioners of such municipality, by sec. 9 provides that the Local Government may rescind or vary such notification, "*on the recommendation of such Commissioners at a meeting.*"

3 **"Number of councillors."**—In the Bengal Act, it is provided that the number of commissioners shall in no case be more than 30 or less than 9. In the Madras Act the Municipal Council is to consist of not less than 12, and not more than 24 persons, and the Chairman (President) may or may not be in addition to the number.

The Panjab Act fixes a *minimum* of 3, and by the rules the *maximum* in most municipalities is either 6 or 9, in a lesser number 12 to 15 and upwards, in a few it is 24, in one 27, in Lahore itself 30 and in Multan 36.

The Central Provinces Act fixes no *maximum*, but the *minimum*, is 5.

The N.-W. P. and Oudh Act fixes neither a maximum nor minimum; so also the Lower Burma Act. The Madras Act fixes the minimum at 12 and the maximum at 24.

The Panjab Act provides that Government may, in the public interests, direct that an election seat when vacant be filled by appointment, and *vice versâ*, an appointed seat by election, or that either remain vacant, and it may at any time reduce the number of seats and declare them vacant.

The N.-W. Provinces Act provides that when there is a vacancy, Government may direct it to continue vacant, provided the proportion of ¼ appointed members is not disturbed.

As the President is to be one of the councillors (section 23), the total number should also include the President. Hence the Government fix the total number at 12, under the proviso to section 10, at least 6 must be elective, and the remaining 6 nominated. If the municipality have been given the right to elect their President, he may be elected out of any of the 12. But if the President is to be appointed by Government, he must in the first instance be nominated by the Commissioner one of the 6 nominated members, and, if he be a salaried servant of Government (as not more than 3 of the nominated councillors are to be such servants), not more than 2 of them are to be salaried servants of Government. (G. R. No. 1422 of 10th May 1887, Gen. Dep.)

In municipalities where there is a non-official President, the Collector of the district should not be a Municipal Councillor. (G. R. No. 2751 of 24th July 1885, Gen. Dep.)

By section 9 of the Madras Act, "the Revenue officer in charge of the division of the district shall *ex-officio* be a Municipal Councillor."

4 **Proportion of nominated councillors.**—The *maximum* is to be ¼ the whole body, but, as the words "if any" shew, there may be no nominated councillors and all may be elected. If there are nominated councillors, by section 10 (1) proviso not more than ¼ are to be salaried servants of Government. Under the old Act (sec. 12 of Bom. II of 1884), the number of councillors who may be salaried servants of Government had also to be fixed either generally or specially for each municipality, but this has been now omitted. The number is left indefinite subject to the said maximum.

5 **Rules for elections.**—See Appendix, Part II.

6 **Number of elected members.**—See para 6 Govt. of India Resolution printed in the Preface to this edition.

This provision that the elected members may be partly from rate-payers, partly by sections of the inhabitants, and partly by public bodies or associations, if any, is new.

Objection was taken to "sectional elections" on the grounds that (1stly) this might too often mean "*racial* elections" and it was not desireable in the highest interests of Local Self-Government that any countenance should be given to the perpetration of racial distinctions; (2ndly) if it was necessary to prevent a very great disproportion in the representation of the different communities, this could be done by Government under its power of nomination, which power Government expressly reserved to itself for, among other purposes, this very purpose of putting on the Municipal Council a member or members of any section of the inhabitants which was not represented; or if Government thought that election was better than nomination, there was nothing to prevent Government from nominating the person elected by the community; (3rdly) that by allowing sectional representation, the popular strength would be diminished, inasmuch as those members whose representation was secured by nomination would be able to come in by another way.

It was however, pointed out that Government had not only to think of minorities or sections, but also have often to supply experts to municipalities, and these from the proportion of nominated members; and looking to the fact that Government might declare that in any municipality the whole of the constituents shall be elected, it was necessary to reserve some power of declaring that certain classes or communities should be invested with the privilege of returning members. Moreover experience in Ceylon had shown that election by communities did not accentuate race or caste differences, and it was not necessary that sectional elections should be racial. The sections might be geographical. for the wording of the section admits of elections by wards; and by the adoption of the suggestion made that in cases of municipalities in which elections are by wards, the wards should be fewer, but the representations for each more. so that the chances of racial or communal majorities might be reduced; and thus it was possible that only in most exceptional circumstances and in rare occasions, if it all, sectional elections would have to be resorted to. These provisions are designed to strengthen municipal bodies, and it is a frequent complaint in some places that influential sections of the community who are numerically insufficient to return councillors are unable to obtain representation on municipalities.

Under the N.-W. P. Act the elections are to be by "wards or particular classes of the inhabitants," and both it and the C. P. Act provide that the Local Government may make rules "for the special representation of any classes of the community."

7 **"Inhabitant"** is not defined in the Act. See note 8, sec. 12.

In the Panjab Act it "includes any person ordinarily residing or carrying on business or owning or occupying immoveable property, in any municipality or in any local area which * * * has been declared to be a municipality." And section 206 of that Act provides that the Commissioner is to decide questions as to who come within the definition. In the Madras Act it "means any person who shall have been ordinarily residing in any municipality for a period of 6 months or upwards."

8 **Qualifications of other persons.**—"The question is whether under this clause (*c*) a rule which lays down that votes shall only be received for a candidate who has been proposed and seconded for election by qualified voters, would be inconsistent with section 12, I do not think it would.

"Nothing in such a rule would be inconsistent with the provision that certain persons shall be qualified to be voters. Their qualification for the exercise of the franchise would not be interfered with by it. Its effect would merely be to determine the persons who at any particular election may be voted for.

"Nor would such a rule be inconsistent with the provision that certain persons shall be qualified to be candidates. Those persons would still be *qualified* to be candidates. But before they could actually stand for election they would have to conform to the general rule. applicable to other qualified persons as well as to them, that they should be proposed and seconded. This would not affect their qualification, nor would it throw any real to obstacle in the way of their election, because a man who cannot get two qualified voters to propose and second his nomination can have no chance of being elected.

"Section 12 enumerates various classes of persons who shall be qualified to be elected and to vote, but the list therein given is not exhaustive or final, for under clause (*c*) of section 11, Government can apparently in the rules to be made confer the franchise on any other classes of persons. Clause (*c*) imposes no limitation on the qualifications and leaves it to Government to decide who shall be qualified. Section 12 merely mentions certain persons who shall in any case be held to be qualified, and Government can add any qualifications they like to those mentioned in that clause. (G. R. No. 1571 of 13th May 1884, Gen. Dep.)."

But like other voters and candidates under sec. 12 they must be enrolled before they are qualified to vote or to be elected. The words "so far as sec. 11 (c) (ii) applies" cannot be taken to imply any thing to the contrary. (G. R. N. 5874 of 9th Aug. 1913 G. D.)

9 **Preparation of list of voters:**—This is taken from section 19 of the City of Bombay Municipal Act, 1888, which contains elaborate provisions for the preparation of the municipal election roll. Under sec. 13 a new list is to be published in each year or such date as the rules may prescribe.

10 **Objections to list:**—Under the Bombay City Act, the Municipal Commissioner prepares the Roll and determines objections; and appeals lie to the Chief Judge, Small Causes Court. See section 13 (2) and note as to finality of these appeals.

11 **Publication of Election Roll:**—This is the Roll as finally completed after revision under section 13. The manner of publication is not provided for. But see the Election Rules, Part II. The Bombay City Act, section 21 (4), provides that printed copies of the municipal election roll shall be delivered to any person requiring the same on payment of such reasonable fee per copy as the Commissioner may prescribe.

12 **Commissioner:**—This has by Bom. Act III of 1915.

13 **Origin of the sub-section.** (2)—This was added by Bom. Act III of 1915. The Bill proposed the delegation of all the powers under the section but the Select Committee considered this was excessive and so restricted it as now shown.

Section 23 of the Bom. General Clauses Act 1904, provides that "Where, in any Bombay Act or in any rule passed under any such Act, it is directed that any order, notification or other matter shall be notified or published, then such notification or publication suall, unless the enactment or rule otherwise provides, be deemed to be duly made if it is published in the Bombay Government Gazette" (which in reference to Sind, includes the Sind Official Gazette.)

12. Subject to the provisions of section 13 and section 13 A and to the disqualifiations mentioned in section 15, section 21, sub-sections (3) and (6) of section 22 [3]and sub-section (3) of section 22 A,

[1] Persons qualified as candidates and to be entered in the list of voters..

(1) (*a*) every [4]Honorary Magistrate, and

(*b*) every Fellow and every Graduate of any University, and

(*c*) every Advocate of the High Court and every Pleader, holding a sanad from the High Court, and

(*d*) every [5]juror and assessor,

who for a [6]period of not less than six months next preceding the date on which by the rules referred to in clause (*c*) of section 11 a list of voters is required to be prepared or revised in a municipal district for election purposes, has been [7]resident in such district,[8]

[9]shall be qualified as a candidate and to be entered in the list of voters for such district; and

(2) every [10]person who for the like period [11]has paid the qualifying tax, shall be qualified to be entered in the list of voters for such district; and he shall also be qualified as a candidate [12]if he has been [7]resident for the like period in such district [13]or within seven miles of the limits thereof.

[14]*Explanation 1.*—For the purposes of this section a person shall be deemed to be resident in or within seven miles of the limits of a municipal district if he ordinarily resides or has his principal place of residence in or within seven miles of the limits of such district.

[15]*Explanation 2.*—For the purposes of this section 'the qualifying tax' means a tax, other than octroi, toll and the tax on vehicles and animals, plying for hire or kept for the purpose of being let for hire, imposed in a municipal district, of an amount not less than such [16]minimum as shall for the time being be fixed for such district by the [17]Governor in Council in the case of City Municipalities and by the Commissioner in other cases.

1 **Origin of section.**—This section is as substituted by section 3 of the Amending Act of 1914. It re-enacts the old provisions with some alterations and additions. The original section was a reproduction of the proviso to clause (*d*) section 12 of the old Act of 1884 with certain extensions. Compare with section 10 Local Boards Act and notes thereto in Cumming's "Local Board Manual."

The present amendment is on the lines of section 10 A, sub-section (1) clause (*c*) of the Madras Act of 1884. The alterations now made are referred to in the notes, but the main alteration is to make residence within the district or within 7 miles of the district essential for qualification as a candidate of one who is merely a tax payer.

It is desirable that candidates should be resident in or close to municipalities where they wish to serve as Councillors and should not be merely tax payers thereof. It was objected that such a provison would deprive many Municipalities of the services of persons who are exceptionally qualified to serve on the Board, but against this it was urged that it is much more important in the interests of Local Self Government that persons who have a residential interest should be encouraged to serve on the corporation than those whose interests in the Municipality are only personal. In dealing with questions of Local Self Government it is the person who has a sense of local needs and a personal knowledge of local wants who is more likely to be a useful councillor than one residing outside and whose interest as a mere tax payer might often be very little, and who desired to be candidate rather for the honor of it. The provisions of this section as to Councillors apply only to those who are to be elected and do not refer to the qualifications of Councillors who are to be nominated.

2 **"To the provisions of section 13".**—These words should be omitted as they have no sense here. Section 13 in no way relates to the qualifications of a candidate. In so far as they regard "voters" they also have no sense, for this section 12 relates to qualifications *for entry* in the list, while section 13 deals with those who *have been entered or omitted* from the list. The one says who have a right to be entered in the list, the other who have a right to vote, two very different things, for it is not the *right of entry* but *actual entry* that makes a person qualified to vote.

3 **"And sub-section 3 of section 22 A."**—These words should be deleted as there is no such section. It was in the Bill as submitted by the Select Committee, but was omitted after discussion in Council. The retention of these words here was clearly a clerical oversight. See note to section 22.

4 **Honorary Magistrate.**—These persons are given the franchise on account of their great local experience and influence. Under the Madras Act an Honorary Magistrate for the municipality is disqualified unless Government exempts him.

5 **Juror and Assessor.**—A list of these persons is published every year in the Local Government Gazette.

6 **Period of residence.**—Under the English Municipal Corporations Act the period is 12 months. Under the Bengal Act it is for a period "not less than 12 months immediately preciding the election." As any person having any of the qualifications mentioned in this section, and not otherwise disqualified, cannot vote or be qualified to be elected unless entered in the list, it follows, that, if an Honorary Magistrate, &c., come to reside in a municipal district, or a resident obtain any of the said qualifications, or a tax payer begin to pay the qualifying tax, less than 6 months before the date for preparation, &c., of the roll, he must wait until the following annual revision of the roll, and then get himself entered therein, before he can vote or be eligible for election.

7 **Resident in such district.**—The old Act simply required that the person should be "resident within a municipal district," but as this was open to many abuses, the law now requires not only a residence of not less than 6 months, but residence "in that district," that is the municipal district for which he is a candidate or voter. This is in conformity with the existing rules.

The Bombay City Act does not make residence *even in the city limits*, a *sine que non* for a voter at a ward election unless he is not otherwise qualified, but in elections for Justices and Fellows it is necessary.

Resident-definition of.—This is now given in Explanation I which is quite new. See notes thereto.

The Bombay City Act, sec. 3, provides "(*n*) a person is deemed "to reside" in any dwelling which he sometimes uses, or some portion of which he sometimes uses though, perhaps, not uninterruptedly, as a sleeping apartment; and a person is not deemed to cease "to reside" in any such dwelling merely because he is absent from it, or has elsewhere another dwelling in which he resides, if there is the liberty of returning to it at any time and no abandonment of the intention of returning thereto."

Under the Municipal Voter's Relief Act, 1885 (48 & 49 sec. c-9 s-2) he is held to be a resident even though for a period not exceeding 4 months on the whole he has by letting or otherwise permitted his house to be occupied by another person as a furnished dwelling house and during such occupation he has not himself resided in the district.

8 **"Or within 2 miles of the limits thereof."**—These words were by the Amending Bill inserted here as taken from the Madras Act of 1884, 10-A (1) (*c*), but were omitted by the Select Committee. Subsequently when this matter was discussed in Council it was objected that the extension beyond the limits was undesirable as it would bring in, in some cases, all kinds of persons who had no real interest at stake in the municipality and who paid nothing towards its taxes. On the other hand it was urged that the extension would give the municipality in some cases the benefit of the services of men of intellect and standing who did not reside in the district. Against this it was contended that it was not enough that a man should have brains to make it likely that he would take an interest in the municipality. There must be such an interest as that of one actually residing in the municipality would have, whereas in the case of the person who paid taxes, while the payment gave the right to vote without any residential interest, in order to qualify for the office of candidate, it was necessary that he should also have a residential interest, even though the residence was not actually within the municipality.

The English Municipal Corporations Act 1882 (45, 46, Vic. C. 50) provides "must have resided for 12 months in the borough or within 7 miles of it, or if he resides within 15 miles he must be entered in the separate non-residential list."

9 **"Shall be qualified as a candidate":**—This is subject to sec. 13-A, so he must be actually enrolled before he can claim to be qualified.

"*And to be entered in the list of voters*":—Under the English Municipal Corporations Act "Every person so qualified shall be entitled to be enrolled as a burgess, unless he—(*a*) Is an alien, (b) Has within the 12 months aforesaid received union or pariochial relief or other alms, or (c) Is disentitled under any Act of Parliament."

There is no such limitation to the franchise under this Act. See sec. 13 note 4, and sec. 21, note 1.

Disabled councillor seeking re-election, candidature refused, no suit for injunctions lay against municipality.—One Chunilal Maneklal, a councillor of the Surat Municipality, disabled himself from continuing to be a councillor by having acted as a councillor in a matter in which he was professionally interested as a pleader. On being thus unseated, a vacancy was created and a bye-election was ordered to be held. He again offered himself as a candidate, and being duly qualified, was nominated as one by duly qualified electors. The officer appointed to receive the nomination received the papers, and having heard the plaintiff, returned them on the ground that he, having been disabled, could not stand as a candidate at the bye-election to fill up a vacancy created by himself. He did not include plaintiff's name in the list of candidates, so plaintiff filed a suit against him for a declaration of his qualification and for an injunction to restrain him from publishing the list without including his name. The Sub-Judge refused the *interim* injunction. The receiving officer published the list without plaintiff's name. The plaintiff thereupon brought a suit against the municipality for a declaration that he was entitled to be elected a Councillor at the elections and for an injunction restraining the municipality from holding the elections without accepting him as a candidate and without receiving the votes of his voters. The first Court rejected the plaint on the ground that it disclosed no cause of action against the municipality. On appeal by plaintiff, the Judge, relying on 24 Cal., 107 and (1860) 8 Moo. I. A. 103, reversed the order, and remanded the proceedings for decision of the suit according to law.

On appeal by the municipality. *Held*, reversing the order of remand, that the suit for declaration against the municipality could not lie because the municipality neither denied nor was interested to deny the character or right which the plaintiff sought to establish. It was the officer mentioned in Rule 13 of the District Municipal Election Rules that was concerned with that question and over him the municipality had no control. The claim for an injunction could not be sustained against the municipality when it had done no wrong and had proposed to proceed in accordance with the Act and the Rules so far as they relate to it. (*The Surat City Municipality* v. *Chunilal M. Ghandi*, I. L. R. (1906) 30 Bom. 409 (1906) 8 Bom. L. R. 209.)

No suit for damages against Election Officer unless malice proved.—The plaintiff thereupon brought a suit against the officer for an injunction that the defendant should enter the plaintiff's name in the list of candidates to be published by the defendent, and for a declaration that he was duly qualfied to appear as a candidate. The plaintiff subsequently claim damages instead of injunction. The first Court found that the plaintiff was not entitled to an injunction as the list of candidates had already been published, but it awarded to him damages to the extent of Rs. 150 owing to the defendant's wrongful act in illegally rejecting the nomination.

On appeal by the defendant the Judge reversed the decree and dismissed the suit on the ground that malice on the part of the defendent was necessary to such a suit and that no such malice was proved. (Vide *Ashby* v *White*, (1 Smiths L. C. 240, 11th edit.) *Held*, confirming the decree on second appeal by the plaintiff, that in the absence of malice no such suit could lie against the defendant. A mistake made in good faith by defendant in determining questions that arose for his decision, would not render him liable to a suit. (*Chunilal* v. *Kirpashankar*, I. L. R. (1906) 31 Bom. 37.)

The case is one to which the language of Lord Chief Justice Abbott in *Cullen* v. *Morris* ((1819) 2 Stark 577 at p. 587) is peculiarly applicable. It may be said here as it was said there, that "the returning officer is to a certain degree a ministerial one but he is not so to all interests and purposes; neither is he wholly a judicial officer, his duties are neither entirely ministerial nor wholly judicial, they are of a mixed nature. It cannot be contended that he is to exercise no judgment, no discretion whatsoever * * * the greatest confusion would prevail if such a discretion were not to be exercised. On the other hand the officer could not discharge the duty without great peril and apprehension, if in consequence of a mistake, he became liable to an action." See sec. 22 (5) and notes thereto.

10 **Person.**—This word includes a company or association or body of individuals, whether incorporated or not. (Bom., General Clauses Act, 1904 section 3, 35).

A duly accredited and legally appointed agent, who pays all the municipal cesses and taxes on behalf of the landlord, his principal, is not qualified to vote as such agent, because the money so paid does not come out of his pocket, but that of the landlord who is qualified to vote.

A mortgagee in possession of mortgage property pays the municipal cesses and taxes. If under the terms of his mortgage, he is entitled to debit the amount to his mortgage, not he, but the mortgagor is qualified to vote; otherwise he is entitled to vote.

The representative of a joint stock company or a literary, or other society or association holding property and paying municipal taxes and cesses is entitled to vote, as such representative only, and not in his own right.

A guardian (legally appointed or natural) cannot vote on behalf of a minor landholder. No one under 21 years of age is entitled to vote. A guardian cannot exercise a right which his ward does not possess. (G. R. 3224 of 24th Aug. 1885, Gen. Dep.)

Under the English Act when a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, &c., then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor, is equivalant to the occupancy and rating of the successor who is not required to prove his own residence, occupancy, or rating before the successor.

Joint trustees.—Where under rules made under sec. 11 (c) (*iii*) the representative of 2 or more trustees is qualified to be entered in the municipal roll of voters and is so enrolled, such representator is a qualified candidate for election, provided he is not otherwise disqualified.

Government decided in G. R. 1209 of 12 Feb. 1913 G. D. that the finding of the District Judge of Thana that a joint trustee was not so qualified was incorrect and should be disregarded.

11 **Has paid the qualifying tax.**—These words have by the Amending Act been substituted for the words "has been paying taxes, other than octroi, &c," and Explanation 2 has been introduced to explain what is meant by the qualifying tax.

Under the old Act of 1873 it was merely "every person paying," and in practice this was construed as "assessed to pay." Act III of 1901 altered the words to "has been paying"

and this was construed as evidently contemplating *an actual payment* for the said period. The meaning has now been made clearer.

The law does not require a residential qualification for a taxpayer as a voter, but the taxes qualifying must be taxes paid for the particular municipal district for which the person desires to vote, and the payment must be for a period of not less than 6 months next preceding the date, &c., as above.

If the tax is tendered for payment and is illegally refused, under English law he is nevertheless, for the purpose of admission to the burgess roll, 'deemed' rated to that tax. See *Marsh* v. *Estcourt* (1889) 24 Q. B. D. 147.

It has been held under the English Act that payment of rates to entitle a person to vote must be a payment by his own act or authority. Payment by another person acting as a volunteer, and without any authority from the person liable, is not sufficient. *Reg.* vs. *Mayor of Bridgworth*, 10 A. and E., 66. But a payment by the landlord in consequence of an arrangement between him and the tenant has been considered a sufficient payment under the Reform Act (1832). *Rawlinson's M. C. Act*, 82.

Payment by one not really liable does not qualify:—The object of the Legislature was manifestly to confer the franchise upon persons who possessed a specified property qualification indicated by the payment of income-tax to the State. It could never have been intended that a person whose income was below the taxable minimum should secure qualification as an elector by payment of income-tax when no such tax could under the law be levied from him. The only case in which a similar question appears to have been raised is that of *Humphry* v. *Kinman* in which it was ruled that if a tax is regularly assessed against one who is in other respects a qualified elector, its payment, if made in good faith, will entitle him to vote although such tax was illegally assessed. The authority of the case, however, has been doubted, and the principle recognized therein could not possibly be extended to cover cases where, as here, a person with full knowledge of his disability, submits to an assessment solely with a view to acquire electoral qualification. To countenance such a device would be manifestly to encourage a fraud upon the statute, so as to defeat the true object of the Legislature. I must consequently hold in the case before me that as the income of the defendant was below the taxable minimum and as he could not be legally assessed under the Income-tax Act, his acquiescence in the deduction of the tax from the interest on the Government security held by him, cannot possibly secure for him the qualification essential for the exercise of the franchise contemplated by section 15 of the Bengal Municipal Act. Similarly, a person who is not legally liable to pay municipal rate, but pays it, does not become entitled to become a voter by the mere fact of such payment, unless it is proved to have been made by him as a person legally liable to satisfy the municipal demand. An "owner" for the purposes of the municipal Act includes not only an owner in the actual occupation of the holding but also an owner entitled to receive rent from the occupier or otherwise. It also includes a manager, or agent, or a trustee for any such person. Where a house was purchased in the name of the father, and the major portion of the consideration money was paid by the son out of joint funds belonging to himself and his brothers, and further the expenditure on subsequent extensive alterations and additions were similarly defrayed by the son out of the said funds, and the son was occupying the house while the father was living abroad: *Held*, that the son having a substantial interest in the property should be treated as owner in the ordinary acceptation of that term, and he being the manager or agent of the father could also be treated, as owner, and he was therefore liable under sec. 103 of the Municipal Act to pay the rates assessed on the holding. *Held*, further, that where the son being in possession of the house paid the municipal demands with his own money, it could not be said that such a payment was made by a person neither liable nor competent to make it under the provisions of the law; he being an occupier was as such liable to pay the rates under sec. 105 of the Bengal Municipal Act. (*Narendra Nath Sinha* v. *Nagendra Nath Biswas* (1911) I. L. R 38 Cal. 501.)

Under the Bombay Act, however, this objection must be taken before the Municipal Roll is finally published, otherwise the entry once made in the Roll cannot be questioned.

12 **If he has been resident &c.**—This provision has been introduced by the Amending Act of 1914 and is an important one, since it makes residence a *sine qua non* for a qualified candidate who is merely a tax payer. See note 1.

Under the old Act, it was urged that a residential qualification should be required of *al* candidates, and that the omission of the provision in the case of a tax-payer, did not check an abuse which had sometimes shown itself in some municipal towns. For instance a tax-payer, who lives in Bombay, keeps up his family members at * , and by virtue of this payment of house-tax gets himself elected as a councillor. He insists on all notices and circulated papers being sent to him by post to Malabar Hill, and takes the train to——and back for the general meetings. He can bear no part in any of the various committees and, in short, contributes nothing to the local administration except numerous speeches. Such a case is quite inconsistent with the spirit of local Government, and would be impossible with a mere intelligent

electorate. In England, popular opinion prefers that an aspirant to municipal honours should be an inhabitant not only of the town, but of the ward he wishes to represent. Yet in England it has been thought necessary to insist by law on residence within seven or fifteen miles (as the case may be) of the borough, while in India, according to the existing Act and this amendment, a man may sit in the council though he never at any other time sets foot in the town, provided only that he pays the house-tax and sanitary rate. That is a fair enough qualification for a voter, but the best comment on it as a qualification for a candidate is, that if it was much taken advantage of, the municipal administration as distinguished from speechifying would come to a standstill for want of men.

Under the Bom. City Act, section 11 (2), a voter of a ward election *must reside or be the owner of some building or land in that ward*; and a voter for any other election *must reside in the City*; and as no one is qualified as a councillor, unless also qualified as a voter the residential qualification, in the case other than a ward candidate is a '*sine qua non*' only in the case of a candidate.

It was pointed out that as the law existed prior to the passing of the Amending Act it was possible, indeed was not infrequent, that a person who resided many miles away from a municipal district, was a councillor of such municipality as of also other municipalities. His Excellency in Council rightly characterised this as "a scandalous state of affairs."

Under the Madras Act to qualify as a councillor, the person must be resident within the municipality or within 2 miles of the limit thereof. This does not, however, apply to a salaried servant of Government.

13 **Or within 7 miles of the limits thereof.**—This provision has also been newly introduced by the Amending Act. Actual residence *within* the limits was not considered so necessary in the case of a councillor as of a voter. See note 8.

In the debate in Council it was proposed that the words to be added should be "provided that the place of residence within 7 miles is not in any other municipal district," but against this it was urged that there was no need to restrict the right of a person who paid the qualifying tax in 2 or more municipalities within the 7 miles limits if he wishes to vote in any or all.

14 **Explanation 1.**—This is newly introduced by the Amending Act of 1914. This clears up in a measure much of the doubts existing formerly as to the meaning of the term, and the notes in the preceding edition of this Manual on this point are now mostly inapplicable. G. R. 485 of 6 Feb. 1884 Fin. Dep. discusses the subject but this being prior to the new definition is not now of any use for reference.

It was then held that in the case of native servants of Government they should be held to reside at the places where they are from time to time officially posted and not at their paternal or ancestral home.

15 **Explanation 2.**—This is merely a part of the old section in a new form, with the exception of the words "and the tax on vehicles * * * * let for hire," which are new, and is in accordance with the Bombay City Act sec. 11 (3).

16 **Minimum tax.**—This is fixed for each municipality separately and ranges from Rs. 2 to Rs. 10 per annum in the case of house-tax and Rs. 20 per annum in the case of other direct municipal taxes. Under the Bengal Act it is only Rs. 3 per annum.

Under the Bombay City Act, section 11 (2) (*c*), the qualifying tax is not less than Rs. 30 per annum, and (3) is "either the general tax or the tax on vehicles and animals other than vehicles and animals plying for hire or kept for the purpose of being let for hire, or the aggregate of both the said taxes."

Under the English Act he must be seized or possessed of real or personal property to the value of £ 1,000 or 500, or rated to the poor rate on the annual rateable value of £ 30 or £ 15 according as the borough is one having 4 or more wards or less.

[2]Operrtion of lists.

[1]**13.** (1) When, in accordance with rules framed under sub-clauses (iii) and (iv) of clause (*c*) of section 11, a list of voters has been prepared or, upon a general revision, completed, a copy thereof signed by such person as may be designated in this behalf in the rules aforesaid, shall be the Municipal Election Roll. A new Election Roll shall be published in each year on such date as may be prescribed by the

Rules, and shall continue in operation for a period of twelve months from that day :

[3]Provided that if a new Election Roll is not published in any year before the date prescribed, the Roll then in operation shall continue in operation until the new Roll is published.

(2) At every election of councillors every person enrolled in the Municipal Election Roll as for the time being in operation under sub-section (1), shall be deemed to be entitled to vote, and every person not so enrolled shall be deemed to be not entitled to vote.

[4]Right to vote to depend on entry in roll.

1 **Origin of section.**—This is taken from part of section 21 of the Bombay City Municipal Act, 1888. The Bengal Act of 1884 after providing for certain qualifications of voters and for rules for other qualifications says no person who is not entitled to vote shall be deemed qualified for election; Provided that nothing contained in this section nor in any rules made under this Act shall be deemed to affect the jurisdiction of the Civil Courts."

Under the Local Boards Act (see Cumming's Manual sec. 20) two lists are prepared one of voters and another of qualified candidates for membership.

2 **Marginal note.**—This is not happily expressed and it would have been better to have adopted that of the Bom. City Act from which the section is taken and which is "Completion of the Municipal Election Roll."

3 **Roll to continue in operation until new published.**—It was objected that under this section the clique for the time being controlling the municipality can ensure their own re-election by permitting the list to continue unrevised or insisting on it being revised just as may happen to suit them. The revising of the list is practically in the hands of the municipal councillors for the time being. To this it was replied that some sense of honour and method of conducting their proceedings must be credited to every municipal body. Besides supposing a municipal body were so far lost to their sense of duty as to deliberately refrain from revising the roll, the powers of control under Chapter XII could be brought into action.

The annual revision is necessary in view of alterations and additions of names and also in view of any by-elections that may have to take place. It is not necessary otherwise to prepare a fresh list for every by-election.

The proviso merely prolongs the life of the list for a part only of the next year. It does not do away with the obligation " shall be published in each year." A District Judge under sec. 22 set aside an election on the ground that the Roll had not been revised for over 2 years.

4 **Roll conclusive of right to vote.**—It is necessary to give finality to the roll, as cases have occurred and much litigation has ensued owing to the correctness of the electoral roll itself having been challenged on one ground or the other. Once the roll is complete it must be considered final, pending its revision.

The Roll is not only conclusive as to the right to vote of persons on the roll but as to persons *not* on the roll of their *dis*-qualification to vote. Once therefore the Roll has been finally published the Civil Courts cannot go behind it to enquire whether or not any name omitted should be put on or any name entered should be taken off. Neither can the Polling Officer at the time of an election go into this matter (I. L. R. 24 Cal. 107 note 1 sec. 13-A), nor can the Judge under sec. 22 (see note 2 sec. 22.) This is not inconsistant with the provisions of sec. 22 (5) for there the right to vote is not questioned, it is only that the right is forfeited for corrupt practice.

The effect of this conclusiveness is that the vote of a lunatic, &c., (vide note sec. 21) cannot be rejected. Under the English Act the wording is "Every person enrolled shall be deemed to be enrolled as a burgess, and every person not enrolled shall be deemed to be not enrolled as a burgess." Hence it has been held that though on the Roll, if he has any personal or legal disqualification, such as being an infant, lunatic, alien, felon, &c., then he is not entitled to vote. The roll it is said is to be regarded for this purpose as a register of qualifications, and is conclusive that the people on it have the qualification which entitle them to be there, but if they have any personal or legal disqualification they are not entitled to vote.

The right to vote is not liable to forfeiture if not exercised.

Suit by person on roll if right denied.—In such a case a suit would lie for a declaration of such right (note 1 sec. 13 A.) For the finality of the Roll is not questioned, but a right which is expressly given is illegally taken away. In I. L. R. 24 Cal. 107 plaintiff's right to bring a suit for a declaration that he was entitled to vote and to stand as a candidate was held to be good, and I. L. R. 36 Mad. 120 in referring to this says. "We quite agree that the suit would lie, the matter being one, which the learned Judges in that suit point out, affects the plaintiff's right to vote and to stand at all future elections."

A right to vote is in England a right given by common law, and if denied, a suit will lie.

See sec. 42 of the Specific Relief Act note sec. 22.

If however the refusal to give plaintiff his vote has affected his right to stand for election should he wait till the election takes place and then make an application under sec. 22 to invalidate the election, or may he bring his suit in a Civil Court for a declaration of his right to vote and to stand for election? (See note 9 sec. 22 "*Civil Courts Jurisdiction.*"

Person not on roll allowed to vote.—In such a case the vote may be struck off on scrutiny when an election application is being enquired into under sec. 22.

Name wrongly entered.—Under English Law when a man is entitled by law to the franchise, all reasonable intendments will be made in his favour if the register is ambiguous, but if it is not ambiguous the register is conclusive. See *Finsbury (Central) case* (1892) 4 O. M. & H. 171. A person whose name is wrongly given on the register may vote in the name so wrongly given if he is the person intended. (*R.* v. *Thwaites* (1853) 1 B. & B. 704.)

Name cannot be substituted.—If by a mistake, clerical or otherwise, a person's wife's name is entered in the Municipal Roll, his name cannot be substituted after the Roll is finally published, and he must be held not to have been entered in the Roll. (See I. L. R. 22 Cal. 717.) No supplementary list can be published. (*Ibid.*)

Enrolment in Municipal Election Roll necessary for elected councillor.

[1]**13-A.** A person shall not be qualified to be elected a councillor unless he is enrolled in the Municipal Election Roll:

Representative of an Association.

[2]Provided that if any company, body corporate,[3] or other association of individuals is enrolled in the Municipal Election Roll, any one person duly authorized in this behalf to represent such association shall be deemed to be qualified to be elected a councillor.

1 **Origin of section.**—This is new and was added by section 4 of the Amending Act of 1914. It makes a radical change, as under the old section entry in the Roll was not essential as a qualification of a candidate, though, except as to councillors qualified under section 11 (c) (ii), every candidate must have been *qualified to be entered in the Roll.*

As every qualified candidate must be a qualified voter, every person qualified to be elected would be entitled to have his name entered in the Roll. The section now provides that such enrolement is as essential to qualification as a candidate as it is to a voter. If a person claims to be a qualified candidate the first question is, Is he on the Roll? If not, he is conclusively disqualified. If he is, then it has to be seen whether he is disqualified under section 15 or 22 (3) and (6), and, if he is qualified only as a tax payer, whether he has been resident within the Municipal district or within 7 miles of the limits thereof for the legal period of 6 months.

It is now clear that "every person not so enrolled shall be deemed to be not entitled to be elected," though it might have been advisable to have inserted these words as in section 13 (2) in regard to voters. Thus *omission* from the Roll is *conclusive* of any person's right to be elected, but the section does not go as far as section 13 does in regard to voters, that every person so enrolled "shall be deemed to be entitled to" be elected. Hence an enrolled candidate's right to election may be disputed on the ground that he was not qualified to be enrolled, provided the objection is not based on his right *qua* voter (I. L. R. 24 Cal. 107 noted below) Entry in the Roll, in the case of a candidate, is not conclusive of his right to be elected, because until an election actually takes place and persons on the list begin to exercise their rights, is any opportunity given to test the qualifications of candidates. It seems therefore right to leave the question of their qualifications open to be questioned during the election before the Polling officer, and subsequently by an application under section 22.

The provisions of this section are taken from the Calcutta Act sec. 38, the Bengal Act sec. 15 and the Bombay City Act secs. 14 and 15. Under the English Act "a person shall not be qualified to be elected or to be a councillor, unless he—(*a*) is enrolled and entitled to be enrolled as a burgess."

Under the Local Boards Act no person not entered in the list of persons qualified to be members is qualified to be elected.

The section now sets at rest the question raised in G. R. 5874 of 9th Aug. 1913 and 547 of 21st January 1914, G. D.

It may be observed that as the Act fixes no qualifications for nominated councillors these need not be enrolled.

Suit for declaration that defendant not qualified to be elected.—No such suit will lie, for if defendants' name is not on the Roll, a Civil Court cannot go behind the Roll to see if he is qualified or not; if he is on the Roll, and the alleged disqualification is *qua* voter, it cannot be heard, and lastly the Civil Court has no jurisdiction when the Act has provided a special and final remedy for this. (*vide* note 9 sec. 23.)

The following ruling is note worthy here though the 1st part of it would have no application under this Act. See also the comments on the ruling in I. L. R. 36 Mad. 120.

At an election of a municipal councillor under the Bengal Act S a candidate was declared to have been elected. On objection taken by the defeated candidate, the dispute, as provided by the Act was referred to the District Magistrate who set aside the election and directed a fresh one to be held, on the ground that some of the voters gave more votes than there were vacancies, and also that S was not qualified to vote or to be elected. S then brought his suit against the 3 defeated candidates and District Magistrate for a declaration of his right to vote and stand as a candidate, and for a declaration that he was duly elected. The 1st Court granted the first part of the declaration, but held that the election was not valied. On appeal the District Judge though holding that S was qualified both as a voter and candidate, without giving reasons set aside the Munsif's decree and dismissed the suit. On 2nd appeal the High Court *held* that the suit would lie as there was nothing in the Act or any other law which would bar the jurisdiction of the Civil Courts. The proposed amendment of sec. 15 of the Act by the provision that nothing contained in the section or in the rules made under the Act shall be deemed to affect the jurisdiction of the Civil Courts showed that the Legislature recognised the jurisdiction of the Civil Courts in such cases. *Held*, further that the election was not valid, because voters gave 3 votes each for only 2 vacancies and the decree of the 1st Court should be restored. (*Subhapat Singh* v. *Abdul Guffur*, I. L. R. (1896) 24 Cal. 107.)

Held also, that the Magistrate should not have been made a party to the suit. Even if he had no authority to do what he did, he acted *bona fide* in pursuance of what he believed to be the duties of his office, and therefore he would not be liable to an action in respect of it. He certainly would not be liable to an action for damages, and as far as a declaration against him is concerned, he had no interest in the case. No decree could be given against him, and certainly as a matter of policy it would not be right. The suit was rightly brought against the other defendants.

As plaintiff's name was on the register, no objection could be taken to his name having got there because he was not a 'resident.' Under the Act "no person whose name does not appear on the register shall be permitted to vote." Being on the register he was entitled to vote, and as to this the register was final, and under sec. 15, being on the register, he was entitled to be elected. When the objection affects the right to vote as in this case, though the objection may be taken as to plaintiff's right as a candidate, still since the objection *qua* voter is one that cannot be taken, since the register is final as to a voter's qualification, it cannot be taken to him *qua* candidate.

Under the rules for holding elections it was clear that the presiding officer at the election could not, so far as voters were concerned, deal with matters antecedent to entry in the register. It follows that an objection taken to a candidate *qua* voter could not be allowed. See also I. L. R. 38 Cal. 501.

Undivided family.—The Special Committee recommended the insertion of these words but they were subsequently omitted as it was not considered right to limit the members of the family to one vote when legally each might have a separate vote in respect of other qualifications.

2 **Representative of Association, &c.**—This proviso is on the lines of sec. 14 (2) (*b*) Bom. City Act, and makes it clear that the ruling in the case referred to in G. R. 1209 of 12th Feb. 1913, G. D. was even under the Act as before not in accordance with the law. Section 11 (*c*) (iii) provides for a declaration by Government of "the manner in which the right to vote of * * * any company or firm or any other association * * or any trustees

* * * entered in such list may be rendered and exercised." If such representative is a person for the purpose of being entered as a voter under sec. 12 he is equally a person for being a candidate under the same section.

Any one person.—In the corresponding section of the Calcutta Municipal Act the expression is "any one individual person." It was ruled in *re Nisith C. Sen.* I. L. R. 39 Cal. 754 that this meant that the selection for representation was limited to the individuals composing the association and did not include one who was unconnected with the association.

Constitution of municipalities in exceptional cases.[1]

14. (1) (*a*) Nothing in the three sections last preceding shall apply to any permanent municipal district at a hill station, or to any permanent municipal district to which, owing to the smallness of such district, or to the backward state or indifference of its inhabitants, or for other such exceptional reason, [2]the Governor in Council shall, in a notification setting forth reasons and published in the ***Bombay Government Gazette***, at any time declare the provisions of the said sections to be unsuitable

[3](*b*) In any such municipal district the municipality shall consist either entirely of nominated councillors, or partly of nominated and partly of elected councillors, in such proportions, and appointed or elected by such persons, in such manner, and subject to such conditions, as the Governor in Council in the notification published under clause (*a*), or in any subsequent notification published as aforesaid, shall think fit to prescribe.

[4](*c*) It shall be competent to the Governor in Council at any time to alter or rescind any notification issued by him under this section; and in the event of any notification under clause (*a*) being rescinded, the municipality affected thereby shall, from a date to be fixed in this behalf by the Governor in Council, be constituted in accordance with the three sections last preceding.

[5]Periodical municipal districts.

(2) The powers and duties conferred and imposed by this Act on municipalities shall, in a periodical municipal district, be respectively exercised and discharged by a neighbouring municipality nominated in this behalf by Government, or by a municipality specially constituted for the time being and consisting of such councillors nominated in such manner as the Governor in Council directs.

[6]Taxes, rules and by-laws in periodical municipal districts.

(3) If in any periodical municipal district, any tax has been or shall have been imposed, or any rule or by-law has been or shall have been made, under the provisions of this Act or any Act hereby repealed, such tax, unless and until it has been modified, suspended or abolished, shall be leviable, and such rule or by-law, unless and until it has been altered or rescinded, shall have effect, in such district, throughout each recurring season during which

the district is, by virtue of a declaration under section 6, a periodical municipal district.

1 **Origin of section.**—Sub sections (1) (*a*), (*b*) and (*c*) are a reproduction of section 13 of Bombay Act II of 1884, and sub-section (2) of section 14, with the exception of the words "or indifference" in clause (1) (*a*). Compare with section 8, Local Boards Act.

Minimum population franchise.—It is in the opinion of Government undesirable that elections should be held in municipal districts containing less than 3,500 inhabitants. In the case of such municipalities, the Councillors should in future, as now, be nominated and respecting them a notification will be issued under section 13 declaring the provisions of sections 11 and 12 to be unsuitable to them "owing to the smallness of the district." In these cases the number of Councillors should not exceed 12.

In order to give a municipality the elective franchise, the proportions of persons qualified to vote to population must be at least 2 per cent. (G. R 2807 of 27th July 1885, Gen. Dep.)

"*Backward state or indifference of inhabitants.*"—This shows that the powers given by this section could be exercised in such cases where the inhabitants and their representative councillors oppose all attempts to carry on the municipal administration satisfactorily, or exhibit an utter disregard of their privileges and responsibilities in the matter whether as voters or as councillors. Mere default in carrying out certain duties would not come within the provisions of the section seeing that the words are "for other such exceptional reasons." The reasons must be *ejusdem generis* with 'smallne-s' backward state, 'indifference.'

2 **Governor in Council.**—Under section 1 of Act V of 1868 these powers have been delegated to the Commissioner in Sind. (G. R. 4994 of 7th July 1913, G. D.)

Bombay Government Gazette.—In Sind this means the *Sind Official Gazette.*

3 **Provisions applicable to exceptional municipalities.**—Compare this clause with para. 2 of section 8 of the Local Boards Act.

4 **Alteration &c. of constitution.**—The first part of this clause is now unnecessary in view of section 21 of the Bombay General Clauses Act. See note 2 to section 11.

5 **Periodical municipalities.**—See section 6. In abolishing such municipalities the procedure laid down in section 8 should be followed.

6 **Taxes, &c., in periodical municipalities.**—This section was designed to make it clear that no formal re-imposition of these taxes every year is necessary. If taxes are to be imposed the same formalities must be gone through as in the case of a permanent municipality.

*(3) Municipal Councillors.**

General disqualifications for becoming a councillor.

15.[1] (1) No [2]person [3]may be a councillor—

(*a*) who,

[4] (i) having been sentenced by a Criminal Court to imprisonment or whipping for an offence punishable with imprisonment for a term exceeding six months, or to transportation, such sentence not having been subsequently reversed or quashed, or

[5] (ii) having been dismissed from Government service, such dismissal having been notified in the [6]*Bombay Government Gazette*, or

[7] (iii) being a pleader, whose sanad has been withdrawn by the High Court,

[8] (iv) having been removed from office under section 16,

has not, by an order which the [9]Governor in Council is hereby empowered to make, if he shall think fit in this behalf, been relieved from disqualification arising on account of such sentence, or dismissal, or withdrawal of sanad or removal from office, or

[10] (*b*) who is an uncertificated bankrupt or an undischarged insolvent, or

(*c*) who is less than [11]twenty one years of age, or who is of [12]the female sex, or

[13] (*d*) who is a Judge;

and no [2]person

[14] (*e*) who is a subordinate officer or servant of a municipality, or

(*f*) who, save as hereinafter provided, has [15]directly or indirectly, [16]by himself or his partner, any [17]share or interest in any work done by order of a municipality, or in any [18]contract or employment with, or under, or by, or on behalf of a municipality,

[19] may be a councillor of such municipality:

[20] Provided that—

a person shall not be deemed to have incurred such disqualification or to have any share or interest in any such work or in any such contract or employment, by reason only of his—

[21] (i) having any share or interest in any lease, sale or purchase of any immoveable property or in any agreement for the same,

[22] (ii) having a share in any joint-stock company which shall contract with, or be employed by, or on behalf of, the municipality, or

(iii) having a share or interest in any newspaper in which any advertisement relating to the affairs of the municipality may be inserted, or

(iv) holding a debenture or being otherwise interested in any loan raised by or on behalf of the municipality, or

[23] (v) being professionally engaged on behalf of the municipality as a legal practitioner, or

[24] (vi) having a share or interest in the occasional sale to the municipality of any article in which he regularly trades,

or in the purchase from the municipality of any article, to a value in either case not exceeding in any official year five hundred rupees, or such higher amount not exceeding two thousand rupees as the municipality with the sanction of Government may fix in this behalf, or;

[25] (vi-A) having a share or interest in the occasional letting out on hire to the municipality, or in the hiring from the municipality, of any article for an amount not exceeding in any official year fifty rupees, or such higher amount not exceeding two hundred rupees as the municipality with the sanction of Government may fix in this behalf, or;

(vii) being a party to any agreement made with the municipality under the provisions of section 71 or of proviso (*a*) to sub-section (1) of section 156.

[26] (2) If any councillor during the term for which he has been elected or appointed—

Disabilities from continuing a councillor.

(*a*) becomes disqualified under sub-section (1), or

[27] (*b*) acts as a councillor in any matter

(i) in which he has directly or indirectly, by himself or his partner, any such share or interest as is described in clauses (i), (ii), (iii), (vi) or (vii) of the proviso to sub-section (1), or

[28] (ii) in which he is professionally interested on behalf of a client, principal or other person, or

[29] (*c*) departs beyond the limits of the Presidency with the declared or known intention of absenting himself continuously for a period exceeding six months, or

[30] (*d*) by becoming a salaried servant of Government, causes the number of nominated commissioners who are salaried servants of Government to exceed the proportion prescribed in the proviso of sub-section 10, or

[31] (*e*) not being a president or vice-president or a salaried servant of Government, absents himself during four successive months from the meetings of the municipality except with the leave of the municipality,

[32]he shall be disabled from continuing to be a councillor, [33]and his office shall become vacant.

Powers of Government and of the Commissioner to decide whether vacancy has occured.

[34] (3) If any question or dispute arises whether a vacancy has occurred under this section, the orders of the [9]Governor in Council in the case of City Municipalities, and of the Commissioner in other cases, shall be final for the purpose of deciding such question or dispute.

***Honorary Titles.**—(G. R. No. 2600 of 18 April 1892, Pol. Dep., in modification of the orders published under No. 407 of 27 January 1883, Fin. Dep. and G. R. 1589 of 1 May and 2153 of 10 June 1885, G. D., sanction was accorded to the grant of Honorary Titles as follows :—

Municipalities with population of 18,000 *and upwards returning representatives to District Local Boards.*

Titles.	Persons on whom to be conferred.
Rao Bahadur or Khan Bahadur	... Non-official Presidents.
Rao Saheb or Khan Saheb	... ,, Vice-Presidents.
	Other Municipalities.
Rao Saheb or Khan Saheb	... Non-official Presidents.

"As to other officer bearers in any Municipality or Local Board, the Governor in Council will be glad to consider favourably any recommendation for the grant of the personal titles of Khan or Rao Bahadur or Saheb for exceptional zeal or interest in Municipal or District Board work."

Arms Act exemptions :—Under Government of India Notifin. No. 518 of 6 March 1879, "land holders and members of municipal committees of approved loyalty and of good position according to lists that may from time to time be issued by the respective Local Governments" are exempted from the main restrictions of the Arms Act.

G. R. No. 8239, of 19 Nov. 1912 Jud. Dep. specifies the number of arms which may be carried or possessed by these classes of persons as follows :—Two guns or rifles and also old family weapons which they must produce before the District Magistrate, who will prepare a list of the same and furnish the exempted person with a copy under his signature.

1 **Origin of section.**—Sub-section (1) re-enacts all the provisions of section 16 of the old Act with some additions. The section is substantially the same as section 16 of the Bombay City Act. Compare with sec. 11 Local Boards Act.

2 **Person.**—This includes a company or association or body of individuals whether incorporated or not. (Bom. General Causes Act 1904, sec. 3, (35)).

Under the English Act a person in holy orders, or who is the regular minister of a dissenting congregation is disqualified. An officer of the regular forces on the active list cannot hold any office in any municipal corporation, but an officer of the auxillary forces can.

Government servants.—These are not as such prohibited from becoming voters or candidates provided they are otherwise qualified. The only limitation is as provided in sec. 10 proviso and sub sec. (2) (*d*) of this section. See also note to sub sec. (2), and as to dismissed servant see sub sec. (1) (*a*) (*ii*).

Government servant to get sanction.—The Governor in Council is pleased to direct that no full-time servant of Government shall take office as an *elected* Municipal Councillor without having obtained the previous approval of his departmental superior. (G. R. 5295 of 13 Sep. 1901, Gen. Dep.)

The Decentralisation Commission at para. 126 of their report say "Government officers should not be allowed to stand for election."

As to orders of Government on this subject in connection with Local Boards compare notes at pp. 14-15 Cumming's Local Board Manual.

3 **"May be a Councillor"**—Clauses (*a*) to (*d*) disqualify a person from being a councillor of any municipality whatever; clauses (*e*)-(*f*) disqualify *only* for the particular municipality.

This sub-section doubtless means that he is not only not qualified to be elected, but if elected, he may be disqualified to keep his seat as a councillor. These disqualifications first come under consideration when an election takes place, and the Polling Officer has to decide

whether a particular candidate's nomination should be accepted. If he is really not qualified, but owing to the facts being unknown to that officer, his nomination is accepted, and so he gets elected, he may be unseated by an application under sec. 22. If no such application be made, or if made, the election is not set aside, is he still open to be unseated? If after running the gauntlet of the election, and perhaps also a trial by the District Judge, is he still liable to lose his seat? If the legislature meant that sub-section (3) should apply to sub-section (1), then the answer must be in the affirmative. It is submitted however that on the proper construction to be put on sub-sec. (3) it will appear that this could never have been the intention.

As pointed out in notes 26 and 34, this sub-sec. (1) is concerned with the things which affect the qualifications of a person *antecedent* to his election, sub-sec. (2) to those things arising *after* his election and that affect his right to continue to be a councillor. The first is the concern of the elective, the polling officers, and finally the District Judge when so moved; the second is the province of Government to see that if a councillor does anything after his election which the Act says should disable him, then an order may be passed.

The only Municipal Act in India which gives power to Government to remove a councillor for a disqualification acquired *before* election is the Madras Act, but as to this see note 6 sec. 16.

As to suit for declaration of right to be put on the candidates' list or to be struck off the same, see notes to Election Rules. Part II Appendix.

4 **Persons sentenced by Criminal Court.**—Clause (*c*) is as amended by Bombay Act IV of 1885, section 1.

It was then considered necessary to amend this clause so as to make the disqualification applicable to offences under special and local laws, as well as under the Indian Penal Code, and to limit them to cases which should form an adequate ground for disqualification. This clause, as it originally stood, prescribed that a person "who has been convicted by any Criminal Court of an offence which may not lawfully be compounded" will be disqualified. The offences which may lawfully be compounded are set forth in sec. 345 of the Criminal Procedure Code, 1882, and are certain offences punishable under the Indian Penal Code. But offences punishable under special or local laws are not included in this category, and it could not be said that they might lawfully be compounded although they were frequently so trivial as not to appear an adequate ground for disqualification. The mere fact of having been sentenced to such imprisonment would disqualify a person. Cases, however, sometimes occur in which persons are found guity of offences for which the maximum punishment awardable is heavy, are sentenced only to a very slight or nominal term of imprisonment, because of the circumstances which render their culpability inconsiderable. To provide for these exceptional cases this amendment was made.

When the new Act was under discussion, the Special Committee again considered the question whether a sentence for an offence which is compoundable should operate as a disqualification, but the majority were of opinion that no change should be made, especially in view of the power reserved to Government to remove the disqualification.

In the Legislative Council it was urged that the limit of 6 months was arbitary, whereas the more intelligible principle was the restriction to non-compoundable offences which the law recognised of greater moral turpitude. It was however shown that compoundable offences were very various and some involved a moral stigma.

Precisely the same clause stands in the Bombay and Karachi Port Trust Acts, and City Improvement Act, and it has not been put there without deliberation.

The Punjab Act does not lay down any disqualifications, but sec. 11 provides that the Local Government may remove a member if he is "convicted of any such offence, or subjected by a Criminal Court to any such order as implies, in the opinion of the Local Government, a defect of character which unfits him to be a member." A similar disqualification is provided for in the Panjab, Madras, N. W. P. and C. P. Acts.

By 33 & 34 Vic. c. 23 sec. 2 a person who has been convicted of treason or felony is disqualified from holding any corporate office only until he has suffered the punishment or has been pardoned.

Disqualification of persons required to give security.—Security may be taken under 4 sections of the Procedure Code.—106, security for keeping the peace on conviction; 107, security for keeping the peace in cases where a person is likely to commit a breach of the peace, or disturb the public tranquility; 109, security for good behaviour from vagrants and suspected persons; and 110, security for good behaviour from habitual offenders.

Persons bound under section 109 and 110 should no doubt be disqualifical, but cases falling under sections 106 and 107 present more difficulty. Persons bound under section 106

must have been already convicted of an offence, and the sentence may or may not have entailed disqualification under this section. The question is whether the taking of security under this section should in any case involve disqualification, when the substantive sentence does not. Cases falling under section 107 also require careful consideration. The persons bound under that section may belong to every social grade, and the causes of their being called on for security may range from mere hastiness of temper to habitual brutality and turbulence. Persons of good standing and character may be bound under that section to ensure a pacific use of their influence with their followers when religious or other disturbances are anticipated. There are thus clearly two classes of cases falling under section 107, cases where an order for security should involve disqualification and cases where it should not. The manner in which the law should be amended will probably depend on the relative proportions of the two sets of cases. If the former are by much the most numerous it might be sufficient to bring all cases under the provisions of Section 11 leaving it to Government to remove by order the disqualifications in cases of the latter kind. If, on the other hand, the latter cases are more numerous, it might be advisable to enact that disqualification should only follow an order for security under this section where Government on the report of the Magistrate expressly so ordered.

The point also arises whether the ability or inability of the respondent in cases under sections 106 and 107 to give security, and the consequent infliction of imprisonment should be made a ground of difference in regard to disqualification.

5 **Dismissal from Government service.**—The Punjab Act makes such a person *liable* to removal by Government. So also Bengal Act of 1885, s. 18 (b). A dismissal from municipal service would apparently not be a disqualification, but such person may be removed if coming within the provisions of section 16.

6 **In the Bombay Government Gazette.**—These words are by sec. 5 (1) of the Amending Act of 1914 substituted for "as debarring him from re-employment," as it was not the practice to state, in a notification declaring the dismissal of a public servant, that he is debarred from re-employment. There may be, and frequently are cases of dismissal which are not notified in the B. G. Gazette. To such cases these provisions would not apply. The fact that a case is notified shows that it was of a very grave nature and so should operate to disqualify as a councillor. See G. R. 3934 of 18 July 1905.

If no such notification the councillor cannot be disqualified though the case was of such a nature that a notification ought originally to have issued. (G. R. 3199 of 21 May 1907 G. D.)

7 **Pleader.**—Should not "or" appear after the words "High Court."?

8 **Relief from disqualification.**—G. R. 5547 of 18 Dec. 1896, Gen. Dep., states a case in which the question of relieving a person from such disqualification was discussed, and the Gov. of Bombay agreed with the opinion expressed by the Commissioner in Sind, who writes, "The crime of which B. was convicted of attempting to murder L., the result of ultra-fanatical excess, was committed twenty years ago, but considering the circumstances under which L subsequently met his death, not three years later, Mr. James is of opinion that B. should suffer the full penalty entailed by his conviction and should remain an object lesson to the Khoja and other communities, that sectarian disputes which end in bloodshed and murder will be looked upon and visited with heavy displeasure by Government."

Under the Bengal Act of 1884 a removed councillor is not eligible for re-election except with the consent of the Commissioner or the Local Government. See note 1 sec. 16.

9 **Governor in Council.**—6 This in Sind means the Commissioner in Sind (section 3 (3) note).

10 **Bankrupt.**—In England the disqualification applies even if he compounds with his creditors or makes any arrangement for composition by deed or otherwise.

The English Act of 1882 provides that the disqualification shall cease on the bankrupt obtaining his order of discharge, though by 46 and 47 Vic. c. 52 s. 32 a certificate that there has been no misconduct is also necessary.

In *Hardwich* v. *Brown* (L. R. 8 C. P. 406) it was held that a person who had lost a corporate office on account of bankruptcy was disqualified for re-election until he had paid his creditors in full.

11 **Twenty-one years of age.**—The age for majority under the Indian Majority Act IX of 1875 is 18 years except in cases where a guardian is appointed when it is 21 years. Under the Madras Act the age is 25 years.

12 **Female.**—The only exception is that provided for by sec. 31. Females are not qualified to be elected but they are qualified to vote. (*Vide* sec. 21.) Under the English Act an unmarried woman is eligible as a councillor if she possesses the necessary qualifications.

13 **Judge.**—See definition sec. 3 (4). Because they have to try suits to which municipalities are parties. A District Judge has also to try questions regarding the validity of elections. (*Vide* sec. 22.)

It is undesirable that any Judge should be a member of a Municipal Board, the members of which may be called on to take different sides as regards questions affecting public and popular interests.—*G. R. No.* 3665, *October 25th*, 1869.

If these reasons are well grounded then a 'Magistrate' should also be disqualified but he is not (see also note section 161), though as a matter of fact he has infinitely more to do with municipal cases than a Judge, for under this Act he is not only the authority who punishes all offenders against the Act (s. 161), but he is the appellate authority in taxation notices of demand (s. 86), and, under some Election Rules, he is the final authority as to the right of a voter to be put on the Municipal Roll.

The Madras Act of 1884 disqualifies "an Honorary Magistrate for the municipal town unless the Governor in Council exempts him."

Under the Bombay City Act the Chief Judge S. C. Court is disqualified as he is the officer who enquires into election cases and not because he has to try municipal suits. So also under the Calcutta Act which also includes "a Municipal Magistrate."

14 **Subordinate Officer or Servant.**—*Hospital Assistant not disqualified.*—An Hospital Assistant whose salary is either partly or wholly paid from Municipal Funds, does not therefore cease to be a Government servant. The municipality has no power to appoint, dismiss, transfer, degrade, promote, or fine him. He is not their servant, but is subject to the orders of the Surgeon-General and of Government, and is borne on the list of the Municipal Department as an employé of Government. In these circumstances he seems eligible for election or appointment as a Municipal Commissioner. (G. R. 3032 of 12 August 1885, Gen. Dep.)

School Master disqualified.—The case of Hospital Assistants is not on all fours with that of School Masters inasmuch as in the former case, a municipality has no power to appoint, dismiss, &c., whereas in the latter case, it has such a power. Rule 8 of the rules made under section 24 of the District Municipal Act expressly states that 'subject to Rule 7, the appointment, promotion, punishment, suspension and dismissal of all members of the establishments of municipal schools shall rest with the municipality or the School Committee, to whom such power may be delegated.'

"Under the rules, the master of a municipal school is a servant of the municipality, even though his services be lent to the municipality by Government, and therefore under section 16, clause (*c*) of Act, such a master is disqualified for being a member of the municipality." (G. R. 1320 of 23 April 1892, Gen. Dep.)

In *Simpson* v. *Ready*, 12 M. & W., 736 this was held to include the case of a contract made by the corporation with the trustee of a councillor.

15 **"Directly or indirectly."**—That is either a relative or other person through whom he claims an interest. It is immaterial, who the nominal parties to a contract, &c., may be. The object of the Legislature being, that councillors should neither have nor acquire any interest conflicting with the interest of the municipality other than those expressly specified, this section attaches disqualification not only to the contracting parties but to those who have a share or interest in the contract or work, &c.

For English cases see *Barnade* v. *Clarke* (1900) 1 Q. B. 279; also *LeFeuvre* vs. *Lankester* (1854) 3 E. and B. 530. In *Natton* v. *Wilson* (1889,) 22 Q. B. D. 744 C. A., disqualification was declared on the part of a person who was employed by contractors with a local board to do portions of such contract work; see also *Tomkins* v. *Jollife* (1887) 51 J. P. 247. The mere letting of a cart and horse at a fixed sum to a contractor for his work under a local authority has been held to disqualify (*Torvsey* v. *White* (1826) 5 B. & C. 125); see *Whitelly* v. *Barley* (1888) 21 Q. B. D. 154 C. A.

16 **"By himself or his partner."**—These words are taken from the City of Bombay Act, section 16 (*f*), which again seems to have been taken from 5 and 6 Will. IV, chapter 76, section 28. This would apparently not apply to a person who is a member of the firm but not a partner. In the Bill it was proposed to introduce the words "or any person with whom he was joint" but these words were subsequently omitted. If one member of a firm has such share or interest in any work for a municipality of which another member of that firm is a councillor, the latter thereby becomes disqualified as a councillor and liable to a penalty, but the individual having the work of contract, etc., cannot be punished, nor do I think that his contract, etc., could ordinarily be null and void, as he could not be a *mere* agent of his partner. (G. R. No. 1288 of 11th April 1891, Gen. Dept.)

Under the Madras Act, section 10-A (2), a person is disqualified if any of his servants or any person on whose service he is employed is a councillor of the municipality.

Members of joint families when disqualified:—

"1. A Municipal Commissioner and an employe or contractor of the municipality, are members of an undivided Hindu family—(*a*). When the family is undivided in estate and messing (*b*). When undivided in estate and divided in messing. (*c*). When divided in estate and undivided in messing. (*d*). When carrying on separate business, but messing together (*e*). When carrying on separate business, divided in messing, but holding jointly a family house.

Is the Municipal Commissioner disqualified?

"2 A Municipal Commissioner and an employé or contractor, are members of a Muhammadan family holding joint property. Is the Municipal Commissioner disqualified?

"3 In the case of a Christian, Parsi or Muhammadan family, where one member of the family is a Municipal Commissioner, does the fact of another being an employé or contractor of the municipality, disqualify the Municipal Commissioner?

The Remembrancer of Legal Affairs, says:—"The questions raised, may, it seems, be answered as follows:—

(*a*) A municipal Commissioner, who is a Hindu, undivided in interest from a person holding employment or contract with or under a municipality, presumably has an indirect interest in that contract, as in a united Hindu family the earnings of each member go to the common kist. Such interest is disqualifying. It is however possible, that when the earnings of one member are the result of *scientific training obtained without contribution from the family funds*, they may be treated as self-acquired and impartible. In such cases the exclusive interest of the member making such earnings would not disqualify another member of that family from acting as a Municipal Commissioner.

6 B. H. C. R. A. C. J. 54.
I. L. R. 6 B. 225.
7. M. H. C. R. 47.

(*b*) In a Hindu family where the property is undivided, cessation of commensality would not effect the application to the principle stated in the preceding paragraph. Mere commensality raises no conclusive presumption as to the continuance of joint pecuniary interests, nor would its cessation, which is frequently due to mere dissensions between the ladies of a household, raise any presumption that the earnings of all were not put into the common kist.

(*c*) For the above reasons, union in estate and not mere commensality would be the test as to whether a disqualifying interest arose from the employment or contract of one member with or under a municipality.

(*d*) and (*e*) must be answered on the same principles. Merely living in the same house or habitually dining with a man, relative or not, who has a contract or employment with or under a municipality, creates no disqualifying interest under section 16 (*f*), Bombay Act II of 1884, (now section 15 (1) (*f*)) The interest to disqualify must be *a pecuniary* one. A merely affectionate or friendly interest in the person who holds the contract or employment is no disqualification. So in the case marginally noted, Coleridge J., dealing with an analogous provision said "suppose the contract to be with a man's relative, such as his brother or his son, he might have a bias on his mind to decide the question improperly, but no one could say that this would bring the case within the fair meaning of the words of the section."* This of course supposes that 'no fraud is found, no previous contract or agreement or any concert with the contractor is proved,' such as if made with a stranger would equally create disqualifying interest.

Le Feuvre vs. *Lankester*
23 L. J. Q. B. 254.

*5 and 6 Will. IV, C. 76 §28. 'directly or indirectly by himself or his partner any share or interest in any contract or employment with by or on behalf of such Council.

"2 The question raised in paragraphs 2 and 3 of the letter under reply must be answered on the same general principle, bearing in mind that whereas in the case of Hindu Agnates there is a presumption (diminishing in strength with the remoteness of descent from the common ancestor) that the property is joint, there is no such presumption in the case of Muhammadans, Parsis or Christians, who, if they have joint possession of specific property generally hold not as joint tenants but as tenants in common having merely unity of possession but not of ownership and without right of survivorship." (G. R. No 2265, 6th July 1902, Gen. Dep.)

B. H. C. R. 444.

Williams, Personal Property, 341.

Nor does the fact that the amount was trifling make any difference. See *R.* v. *Rowlands* (1906) 2 K. B. 292; *Nell* v. *Longbottom* (1894) 1. Q. B. 767; *Nicolson* v. *Fields* (1862) 7 H. & N. 810; *Lewis* v. *Carr* (1875) 1 Ex. D. 484, C. A.; *Nutton* v. *Wilson* (1889) 22 Q. B. D. 744, C. A.; *Woolley* v. *Kay* (1856, 1 H. & N. 307.

Nor does the fact that the remuneration has not been fixed make any difference. See *Fletcher* v. *Hudson* (1881) 7 Q. B. D. 611 C. A.; also *R.* v. *Rowlands, supra.*

A contract between a council and a person who was not trustee for a councillor. (See *Simpson* v. *Ready* (1844) 12 M. & W. 736) and a contract between a member of a council and the trustees of a non-provided school with whom the council arranged to pay for the fuel for warming the building when used as a school. (See *Cox* v. *Truscott* (1905) 69 J. P. 174; *Todd* v. *Robinson* (1884) 14 Q. B. D. 739, C. A.) are sufficient to disqualify.

A contract made colorably under the name of another person equally disqualifies although the interest is concealed. (*Walsh* v. *Grimsby* (1900) *Times*—30th *November.*)

On the other hand, a contract made by the agent of a member, purporting to be made on his behalf, but contrary to his express directions, will probably not disqualify the member. (*Miles* v. *McIwraith* (1883) 8 App. Cas. 120, P. C.)

Where the statutory prohibition was against "knowingly and willingly" entering into a contract, a contract made with an institution in ignorance that it was such an institution as the statute contemplated did not disqualify. (See *Royse* v. *Birley* (1869) L. R. 4, C. P. 296,)

It is immaterial that the contract is one that cannot be sued on by reason of its not being under seal. (*R.* v. *Francis* (1852) 18 Q. B. 526.)

A person is interested in a contract if he takes an assignment of it by way of security, even before his election. (*Hummings* v. *Williamson* (1883) 11 Q. B. D. 533, C. A.)

How long disqualification lasts.—The disqualification continues so long as the contract exists and the interest in it remains. (*Lewis* v. *Carr* (1876) 1 Ex. D. 454, C. A.) so that where a person having a contract with a local authority obtained a release from the committee of the authority subject to the approval of the authority, which was not given until after his nomination as a candidate, he was held to be disqualified. (*Re Gloucester Municipal Election Petition*, 1900, *Ford* v. *North* (1901) 1 K. B. 683; see also *Cox* v. *Truscott* (1905) 69 J. P. 174; but if the contract is terminated no penalty can be recovered for subsequent acts, unless the interest on the contract has caused the defendant to cease to be a member altogether. (*Feltcher* v. *Hudson* (1881) 7 Q. B. D. 611, C. A.) See also note 18.

When the interest ceases is a question upon which there has been much divergence of opinion. It has been doubted whether the mere existence of a debt for goods supplied constitute such an interest (*Re Gloucester Municipal Election Petition*, supra) and in one modern case it was expressly held that it does not (*Cox* v. *Truscott, supra*; see also note 18 *post*. See also *Woolley* v. *Kay* (1856) 1 H. & N. 307); but it is submitted that such decision is not sound, and that the interest in the contract remains so long as the contract is unfulfilled on either side; see *O'Carrole* v. *Hastings* (1905) 2 I. R. 590.

An assignment of the benefits of a contract before election, if a liability under the contract remains with the candidate (see *Cox* v. *Ambrose*, 1890, 55 J. P. 23), or an assignment of the contract between nomination and the date of the poll (see *Harford* v. *Linshey* [1889] 1 Q. B. 852; or an assignment before election without the privity of the local authority. (See *R.* v. *Franklin* 1872, 6 I. R. C. L. 239) will not remove the disqualification.

17 **Share or interest in work done.**—If any person becomes a councillor and has or subsequently knowingly acquire such an interest, he is liable, under section 44 on conviction before a criminal court, to a fine which may extend to Rs. 500.

18 **Contract or employment.**—See G. R. 1408 of 7th March 1906, Gen. Dep. where a councillor was unseated for purchasing manure at fixed rates from the municipality. The words of the clause are very wide and include such a contract as also the purchase of any other moveable property, except in so far as now provisoes (vi) and vi-A) would apply.

Under the Madras Act of 1884, a person is disqualified, if any of his servants or any person in whose service he is employed is a member of the Municipal Council.

19 **May be a Councillor of such municipality.**—See note 3.

20 **Origin of proviso.**—This part of the proviso, also clauses (ii), (iii), (iv) and (v) are taken from section 45 of the old Act.

As to councillor lending money to contractor with municipality, see 10, I. C. 577 noted section 44.

In England any agreement for the loan of money or any security for the payment of money only does not disqualify. (See *Le Fevre* v. *Lanhester* (1854) 3 E. & B. 530.)

21 **Lease &c. of immoveable property.**—This is taken from Bombay III of 1888, section 16 (*g.*) and follows 5 and 6, Victoria, chapter 104.

Occasionally a councillor may wish to purchase land from a municipality to extend his house, or on the other hand to sell to the municipality a piece of land for widening the road.

As a contract of this kind is thoroughly discussed by the municipality before action is taken, it is considered that such a transaction should not disqualify.

Under the old Act, a councillor could not buy municipal land at an auction or take a lease of such land (*vide* G. R 4773 of 14th Dec. 1885, 1409 of 19th April and 2768 of 7th Aug. 1886; 1285 of 11th April 1891, G. D.)

This includes the lease of a sewage farm granted by a local authority to one of its members with owners covenants on both sides (*R. . Guskarth* (1888) 59 B. D. 621). A letting for a single day is within the exception (*Nell* v. *Longbottom* [1894] 1 Q. B. 767.)

22 **Joint Stock Company.**—A Municipal Commissioner is a Managing Director of a Company, constituted under the Joint Stock Companies' Act, and one of the guarantors for the payment to the share holders in the Company of a fixed annual percentage on the shares of the Company. Is he disqualified by the fact of his Company having contracted to do work for the municipality? 45 and 46 Vic, C. 50—2 from which this clause appears to have been to some extent drafted, provides that 'a person shall not be disqualified or be deemed to have any share or interest in such a contract or employment by reason only of his having *any share or interest* in a Company which contracts with' the Corporation. *Expressio unius est exclusio alterius.* The inference is that any interest other than, or at least exceeding that of, a bare shareholder in a Company contracting with or employed by a municipality would disqualify." (G R. 2266 of 6 July 1892).

23 **Legal practitioner.**—This exemption is not because he is a legal adviser, but because he comes under clause (*f*) as having an interest on behalf of the municipality in an employment. The interest of a legal adviser on behalf of the municipality is considered too remote to make it a disqualification for election. As sub-sec. (2) (*b*) (1) does not include this clause (v) in the list there given, it places the Municipal Legal Adviser in a better position than his brother professionalists engaged by other clients by permitting him to act as a councillor in a matter in which he is professionally interested without being disabled.

The principle of this is correct, if, as doubtless it could not be otherwise, the Legal Adviser acts" (speaks and votes) in support of the advice he has given, for in doing so he gives the best evidence of the honesty of his convictions.

This doubtless includes a permanent legal adviser. Such a person would not come in under clause (*e*) as "a subordinate officer or servant of a municipality.

24 **Occasional sale or purchase.**—This is taken from section 16 (*l*) of the Bombay City Act where the maximum was Rs. 2,000. This limit of Rs. 500 it was thought might be unnecessary and undesirably restrictive more especially in larger towns, so provision is made for its being raised for good and sufficient reason to the maximum of Rs. 2,000 as in Bombay.

The clause has been amended by the Amending Act by the addition of the words "or in the purchase from the municipality of any article," and "in either case," in order to save councillors from disqualification or disablement for occasional petty purchases from the municipality.

25 **Occasional hiring.**—This clause was not in the Bill but was inserted by sec. 5 (2) of the Amending Act of 1914 to meet cases which obviously should not disqualify a councillor. The value will be apparently that of the article hired and not that of the work done, for instance in the case of a municipal steam roller hired to a councillor. G. R. 6198 of 22nd Aug. 1913 General Department discusses a case of hiring which, under the section as it then stood, was held to disqualify. The case would now be covered by this clause.

Exemptions in contracts for lighting, water supply, fire-insurance.—We have carefully considered a representation received from the Karachi Municipality to embody in the Bill a clause on the lines of section 12 (2) (*d*) of the Municipal Corporations Act, 1882, exempting from disqualification for a councillorship a person 'having a share or interest in any company which contracts with the municipality for lighting or supplying with water or insuring against fire any part of the Municipal District." We consider, on the one hand, that it would be anomalous to single out these three classes of companies for preferential treatment and, on the other hand, that to extend such treatment to all registered companies having dealings with the municipality would be too liberal. The present provision is to exempt from disqualification only shareholders in registered companies (vide proviso (ii) to clause (f) of sub-section (1) of section 15). We notice that the principle is followed both in the Madras Act, 1884, section 10-A (1) (g) and in the Madras City Act, 1904, section 34 (1) (b) (iii). We are not in favour of any change in this matter. (Para 6 Select Committee Report)

26 **Disabilities from continuing to be a councillor.**—Most of this sub-section is new. The disabilities under the old Act were only the two referred to in (*a*) and part of (*e*), and all came under the head of disqualifications.

The disqualifications under sub-section (1) become disabilities only if they arise "during the term for which he has been elected or appointed," and not if they relate to anything

prior to the election, &c. The expressions "becomes," "acts," "departs" all make it clear as relating to something arising *subsequent* to taking office. Sub-section (1) says what matters are to prevent a person's election; sub-section (2) what make him forfeit his seat if they occur "during the term, &c.," of his office.

This sub-section says "If any councillor during the term for which he has been elected &c. becomes disqualified * * he shall be disabled from continuing to be a councillor, and his office shall become vacant. "Obviously it is providing for the cases where a councillor has taken his seat, and something occurs to make him forfeit it. Now as a councillor is only such "during the term for which he has been elected &c." this expression is redundant, unless it is used here for a special purpose. That purpose is to give emphasis to the meaning that the things which go to cause the vacancy are things which must occur "during the term &c." Just as sub-sec. (1) refers to matters *prior* to election (vide note 3), so sub-sec. (2) refers to matters *subsequent* to a councillor taking his seat. The two are quite distinct. Clause (a) of this sub-sec. was put here for the purpose of showing that the things which *before* election disqualified him, would be disabilities if they happen *during his office.*

The Select Committee in para. 17 of their Report say "This clause (sub-sec. 15 (2)) describes how a person, not disqualified from being a councillor at the time of his appointment, may subsequently become disqualified."

27 **Acts as a councillor.**—Under section 45 of the old Act where a councillor fulfilled the condition of sub-section (1), proviso clauses (ii) and (iii), it was not lawful for him to "act as a Commissioner in any matter relating to a contract or agreement between the municipality and such company, manager or purchaser." The disability was only just in that matter only. Now it will be observed that not only have the disabilities been increased, but they act so as to unseat a councillor from the moment the disability applies; *his office becomes vacant.*

It is not laid down what "acts as a councillor" means, but doubtless it is in the sense of voting or taking part in the discussion of that matter. Section 36 (p) of the Bombay City Act provides—"a councillor shall not vote or take part in the discussion of any matter before a meeting in which he has directly or indirectly, by himself or by his partner, any share or interest, &c., or in which he is professionally interested on behalf of a client, principal or other person." The Madras Act says "he shall not vote." The Panjab Act says "shall not take part in the proceedings relating to such contract."

Where by a local paving and lighting Act, a penalty was imposed upon any Commissioner "acting as such" in any matter in which he might be personally interested, one of the Commissioners, being personally interested in a footpath, attended a meeting of the Commissioners, and spoke upon the mode of constructing such footpath, *Held*, that this was sufficient evidence to go to the jury of his acting as a Commissioner. (*Charlesworth* vs. *Rudgard*, I. C. M. and R., 498.)

But besides the matters herein specially referred to there are others in which it is obviously undesirable that a councillor should act as such when brought before a meeting. Bengal Act, section 58, provides that no councillor "shall vote on any question which regards exclusively the assessment of himself, or the valuation of his property, or of the property for which he is manager or agent, or his liability to any tax."

This Act contains no similar provision, but good taste should certainly prompt a councillor to act in the spirit of these provisions.

Under the English Act a councillor acts in the office if he takes part in the discussion of the council without voting. (*Charlesworth* v. *Rudgard* (1835) G. M. & R. 896) and the fact of his acting is sufficiently evidenced by producing an attendance book of the members signed by him and the minute-book of the council showing his name as an attending member. (See *Hummings* v. *Williamson* (1883) 11 Q. B. D. 533, C. A.)

Under the Local Government Act, 1894 (56 & 57, Vic. c. 73) acting or voting in the office during disqualification is an offence punishable by fine on summary conviction. Speaking at a meeting without voting also renders the offender liable to the penalty.

See section 38 which provides that acts or proceedings of the municipality are not vitiated if a person acts as councillor while disqualified. See also *Murray* v. *Epsom Local Board* (1897) 1 Ch. 35; *R.* v. *London County Council* (1892) 1 Q. B. 190.

28 **Professionally interested.**—This would imply that all persons professionally (not only legal practitioners) interested on behalf of a client, principal or other person who has such an interest as mentioned in clause *(f)* may be councillors and may continue to be so notwithstanding such interest, but must not act as such in the matter with the municipality except on pain of becoming disabled. A professional interest whether as legal practitioner, engineer, scientist, &c., &c., is not deemed to be such an interest as comes within the meaning of sub-section (1) (*a*) (*f*), but (except in the case, note 23) is such an interest as makes it desirable

that the person should not act *as a councillor* when the matter is before the municipality. See an instance of a legal practitioner being so disabled, referred to in I. L. R. 31 Bom. 37.

29.—**Absence from the Presidency.**—"Presidency" for definition see note 1, sec. 1. This is adopted from section 13 (2) (*a*) of the City of Bombay Improvement Act, 1898, sub-clause (c) of which Act adds "has been absent * * * for a period exceeding 3 months."

Under the old Act absence for more than 4 consecutive months from the limits of the "Municipal District" disqualified all but a salaried servant of Government.

The amendment not only removes the exemption, extends the limits and the time, but adds words which are of doubtful expediency. First, as to limits; looking to the recent amendment of sec. 12, and the emphasis laid on the importance of a councillor residing in the municipal district, it seems desirable to confine the limits to the district as in the old Act. Under the English Act continuous absence from the *borough* disables a councillor. (Vide note sec. .) The amendment appears to have been suggested by G. R. 2757 of 25 June 1896, G. D. to meet the difficulty which is there in referred to; but there seems no good reason for making the disability apply only to continuous absence for the period *from the Presidency* and not the Municipal District. Then the words "declared or known intention" appear to have been introduced for the purpose of enabling it to be ascertained as to when the councillors's seat became vacant, otherwise he could not be disabled until at least 4 months had elapsed. Now it is not absence for 6 months that disables, but a declaration of intention to be so absent coupled with a departure from the limits. In the absence of a declaration it may often be difficult to ascertain the intention. The operation of the section will be confined almost entirely to salaried servants of Government; any other councillor, by concealing his intention, can escape it, apparently for an indefinite period, by getting leave of absence under clause (e). None of the other Municipal Acts in India provide for absence other than from meetings, except that the Bengal Act provides for leave to Presidents and Vice-Presidents.

30 **Salaried Servant of Government.**—See definition sec. 3 (9). This is taken from the Madras Act, section 23 (5). The word "commissioners" here is a clerical error for "councillors."

31 **Non. attendance at meetings.**—The clause as it now stands was substituted by s. 5 (3) of the Amending Act of 1914, and by its simplicity avoids many of the debatable points arising under the former clause and some of which are discussed in G. R. 3580 of 28th June 1902, 6921 of 12th Dec 1912 and 1517 of 13th March 1906 Gen. Dep. Presumably the time from which the period of 4 months will count will be from the date of the 1st meeting non-attended; also that no question can now arise as to want of notice of meetings.

The Act does not apparently provide any disabling period of failure to attend meetings without leave on the part of presidents, vice-presidents, and salaried servants of Government who remain *in* the municipal district. Such president or vice may however, if desirable, be removed for neglect of duty, under section 23 (7).

The cases of presidents not salaried servants of Government appointed or *ex*-officio and of vice-presidents being absent *from the municipal district*, are dealt with under section 23 (5).

There is apparently no limit to the absence of a councillor who is a salaried servant of Government, and not an elected president, either from the municipal district or the meetings.

Neither is there any limit to the leave the municipality may give for non-attendance, so long as the absence is not from the Presidency continuously for 6 months.

Under a repealed section of Bom. Act VI of 1873, a councillor absenting himself from ⅓rds of the meeting during the year, rendered himself liable to be removed by Government, unless he could give a sufficient excuse.

Under section 17 of the Bombay City Act, absence for 3 successive months from the meetings, "except from temporary illness or other cause to be approved by the corporation" was a disability. The Panjab Act is the same without the exception; the Madras, N.-W.-P. and C. P. Acts make the exceptions, "if the excuse is sufficient in the opinion of the Local Government." Bengal Act of 1885 says "if he, without an excuse sufficient in the opinion of the Commissioner, absents himself from 6 consecutive meetings."

32 **"Shall be disabled from continuing to be a councillor."**—These words have given rise to much dispute as to whether they mean for the whole of the unexpired portion of the term for which he has been elected or appointed so that he is not eligible for re-election until the next general election, or is it meant that he is merely disabled from retaining his seat as councillor, and does not preclude him from re-election at any subsequent by-election, including that for the vacancy created by his own disability? This question was first raised in G. R. 3875 of 26 July 1904 G. D. There the argument was that he was not eligible because (1) otherwise the disability would be a dead letter, and (2) though sec. 18 speaks of "a person" and does not expressly specify 'another person' the words "shall hold office so

long only as the councillor in whose place he is elected" contemplate another and not the same person. The Remembrancer of Legal Affairs agreed in this view, and that therefore the disabled councillor could not during the period referred to be said to be 'duly qualified' under sec. 19. The councillor in question filed a suit for a declaration of his right to stand for the vacancy. (*Vide* note of I. L. R. 30 Bom. 409 and 31 Bom. 37, sec. 12 note 9.) The lower Court upheld plaintiff's contention, and on appeal (*vide* G. R. 1429 of 8 March 1906) the District Judge concurred, and says "There appears to me to be no warrant whatever for inferring that the ineligibility is to be until the next general election. The law does not say so. All it says is that the person so disabled shall not continue to be councillor and his office shall become vacant. The provisions of the law are fulfilled when the office becomes vacant, and if he is re-elected he cannot be said to have contravened the law, which only says he shall not continue to be a councillor without vacating office. When he is unseated and has to go through a fresh election, he returns under a fresh mandate. It is quite unnecessary to read into the law words that are not there. If it had been intended to prohibit the re-election of a disabled councillor till the next general election, this would have been presumably stated in the Act. But there is nothing to that effect." The case was taken to the High Court on 2nd appeal, but as it was thrown out on other grounds the Court expressed no opinion on this point.

The same question was again raised in another case in G. R. 5140 of 30 Aug. 1906. Here the Collector remarks:—"I consider Mr. P. was in no way disqualified for re-election. He was a councillor, he became disqualified for 'continuing to be a councillor' and he ceased to be a councillor. The discontinuance of his function having become an accomplished fact, he has, so to speak, 'purged his contempt,' and there is nothing in the Act to subject him to a continuing penalty of disqualification or to prevent him from standing for re-election at a by-election." The matter was disposed of by Government by merely referring to the legal opinion stated in the G. R. last quoted. Subsequently the High Court ruling above referred to came under consideration, and G. R. 7419 of 14 Dec. 1906 quotes the following opinion of the Advocate General:—"I think *a prior* there is no reason for holding that the continuance does not relate to the then current term for which, but for the disablement, the councillor would continue to hold office. Any doubt as to the meaning to be attached to the words is however in my opinion removed by the terms of sec. 18, which shows that the person elected to fill the vacancy must be some one different from the person whose office has become vacant."

Now, as shewn in note 26, the obvious meaning of this sub-sec. (2) is that the things therein enumerated are things which unseat a councillor only if they arise "during the term for which he has been elected &c." If this be correct then it is clear that the words "he shall be disabled &c." mean nothing more than that he ceases to be a councillor. There is not the slightest ground for importing from the first part of the sub-section the words "during the term for which &c."and making this last sentence to mean "he shall be disabled during the remainder of the term for which he had been elected." The actual words used are very different. They provide for the cases in which a councillor ceases to retain office; they have no bearing whatever on the question as to how long he continues to be disabled.

The argument that if a disabled councillor is allowed to stand for re-election, the disability would be a dead letter, has very little weight. Is it a dead letter that he has lost his seat, that he is put to the trouble, expense, and risk of another election which is hardly likely to be successful, unless the disability is one which in its very nature does not really affect his character? On the other hand, as pointed out in note 7 to sec. 18 there would be many cases in which there would be no object in preventing his re-election.

As to the argument that sec. 18 means another and not the same person, see the notes thereto.

33 **Office shall become vacant.**—Under the English Act the council must forthwith declare the office to be vacant, and must signify the same by notice signed by 3 members of the council, countersigned by the town clerk, and fixed on the town hall. Thereupon the office becomes vacant, and not before.

Upon the disqualification attaching, it is not competent for the disqualified person to resign. (*Hardwhich* v. *Brown* (1873) L. R. 8 C. P. 406; *Fletcher* v. *Saunders* (1885) 49 J. P. 424.)

On the disability arising the vacancy must be filled up. A councillor who despite his disability persists in acting as councillor renders himself open to a suit for a declaration prohibiting him from doing so.

34 **Government to decide questions of vacancy.**—Under the Bombay City and the Calcutta Acts these questions are decided by the Judge Small Cause Court who also decides election petitions. In the Bill as originally framed, it was proposed to leave the decision to the District Judge, who is also to decide the validity of elections, but this was altered as it now stands.

G. R. 3850, of 15 August 1910, raised the question of the desirability of an amendment of this sub-section, "because inconvenience is caused by leaving the question of validity of elections to the District Judge and of the disqualification of councillors to Government of the Commissioner. The two questions are so closely connected that it is very difficult to distinguish between them." But it is submitted that it is an entirely erroneous assumption that the questions to be decided by Government relate to acts *prior to the beginning of the term* for which the councillor has been appointed &c. The words "under this section" must be construed to mean "under sub-sec. (2)." The words are "any question arises whether a vacancy has occurred." No vacancy occurs under sub-sec. (1); it is only sub-sec. (2) that provides "his office shall become vacant." As pointed out in the notes 26 and 32, the power given to H. E. in Council relates only to matters referred to in sub-sec. (2) as arising "*during the term of office* of the councillor"; the power given to the District Judge under sec. 22 relates to matters affecting the *election* of the councillor, that is, matters *antecedent* to his becoming a councillor. The two are quite distinct. To hold otherwise would mean (1) to place on this sub-sec. a construction which is opposed to the words actually used; (2) it would be inconsistent with the provisions of sec. 22 whereby the Legislature has created a special tribunal for the disposal of such questions and has made its decisions final, so that it is open to no one to raise any dispute regarding a councillor's right to take his seat, which dispute could have been made by an application under sec. 22. All the High Courts in India have upheld the principle that where a special tribunal has been appointed for a particular purpose, resort to that tribunal is the sole remedy for any wrong which that remedy was intended to right. If Government may pass an order unseating a councillor because he was not qualified to be elected, it would be allowing a person to set it in motion to get round this principle. 3rdly, an order of Government may, as pointed out in the above resolution, be in direct conflict with the District Judge's order which sec. 22 says is final. 4thly, not only would the power of Government be much more extensive than the Judge's, but it is under no obligation to give any reason for its decision. 5thly such an order is as much an order of removal as one under sec. 16, but there the power of Government is conditional on the recommendation of the municipality, so that if a councillor were guilty of even 'disgraceful conduct' Government could not remove him if the municipality did not desire it. If this be so in regard to a councillor who while a councillor disgraces himself, it is very improbable that the Legislature intended that Government should unseat him after the electorate had set their seal of approval of him by electing him, because he had any of the disqualifications referred to in sub-sec. (1). It seems hardly fair that a person who has been allowed to stand as a candidate, who has passed the test of an election, and has not been unseated on an election petition, should be liable to have his past raked up by every unsuccessful candidate or other inimicable individual, and thus Government be obliged to go into endless questions and disputes of this nature. (See the remarks of Muller J. in I. L. R. 30 Mad. 113 note 7 sec. 16.) Lastly, such a construction is opposed to the principle of similar Acts of the Legislature. The whole of this section is based on sections 16, 17 and 18 of the Bombay City Act. Now sec. 18 provides that "whenever it is alleged that a councillor has *become* disqualified *for office* the decision of the Judge is final." The allegation must not be that he was disqualified for election, for then the Judge would say, "This allegation amounts to this that he should not have been elected, but this you should have made by a petition under sec. 33, sub-sec. (3) of which says, "Every election not called in question in accordance with the foregoing provisions shall be deemed to all intents a good and valid election." You are therefore precluded from raising this question now. The only question I am concerned with under sec. 18 is whether he "has become diqualified for office," that is, has he done anything since his election to disable him from continuing in office." This is precisely the position which the Legislature intended to put Government in by sub-sec. (3). To make the matter clear the words "under sub-sec. (2)" should be substituted for the words "under this section." In this way it is clear that the jurisdiction of the District Judge ends where that of the Governor in Council begins, and so there is no conflict. The effect of the 3 sub sections, read with the rest of the Act and rules, is that a candidate for election may have his nomination rejected for any of the reasons stated in sub-sec. (1), but if not rejected, notwithstanding his having any of the disqualifications, his election may be brought into question by application to the District Judge. If it is not so questioned, or being questioned he is still not unseated, it cannot be questioned at all, and he is entitled to enter on his office. If after taking office he acquires any of the disqualifications of sub-sec. (1) or any of the other disabilities in sub-sec. (2) he forfeits his seat, and if there is any dispute on the point Government may pass an order. See also notes to sec. 18.

The proposal in the Bill No. X of 1914 (Decentralisation) now Bombay Act III of 1915, was that the power to decide as to the vacancy should be delegated in the case of City Municipalities to the Commissioner and in the case of other municipalities to the Collector but the Select Committee considered the delegation was excessive and after considerable discussion decided that the delegation should stand in the case of City Municipalities but not in the case of the other Municipalities. Subsequently however when the Bill was finally discussed in Council the proposed amendment was dropped.

15 A. Any councillor may resign his office by giving notice in writing to that effect to the president, and the president may resign his office by giving notice in writing to that effect to the Commissioner.

Resignation.

1 **Origin of section.**—This is new and was inserted by sec. 6 of the Amending Act of 1914, with the intention of supplying the omission on this point in the Act under which it was only by implication that a resignation had legal effect. The Bill proposed that there should be a tender of resignation "by letter to the President, or, in the case of a President, to the Commissioner, and such resignation shall have effect from the date on which it is accepted by the President or Commissioner." The reason given in the Statement of Object and Reasons was to meet "a recent case (see note 7, section 16) in which a councillor, who had been recommended for removal under section 16, was able to escape that penalty by resignation," since, mere resignation having the effect of causing the councillor to cease to be one, no order of removal could be made against him. This proposal was opposed on the grounds, 1st, that it was not desireable to fetter a resignation in this way and so force a councillor to remain on against his wishes, and 2nd, that the apparent object to penalies him by an order of removal before he was allowed to resign was against the spirit of sec. 16 which aimed at only getting rid of an undesireable councillor; 3rd, that it was placing an undesireable power in the hands of a President who might often be biassed against the councillor.

The omision from this section of the proposals in the Bill has emasculated it. The effect of it now is merely that unless there is this "notice in writing" there is no resignation. If the notice is given it fixes the fact and some date from which it must be held to take effect, and so facilitates action being taken for filling up the vacancy which the law makes obligatory. Though 'resignation,' like 'death,' necessarily implies that there is a vacancy, it seems desirable that, following the English Act, provision be made in this section not only that "the resignation shall take effect from the date of receipt of the notice" but that "thereupon the office shall become vacant."

Under the Bengal, Madras, Punjab and U. P. Acts it is only when the written resignation is accepted that "he shall be deemed to have vacated the office." The Bengal Local Self Gov. Act adds "and shall not be re-elected until the expiration of the term for which he would have held the office but for his resignation."

Under the English Act sec. 36, a person elected to a corporate office and duly holding the same may at any time by writing signed by him and delivered to the town clerk resign the office on payment of the fine provided for non-acceptance thereof.

In any such case the council must forthwith declare the office to be vacant, and signify the same by notice in writing, signed by 3 members of the council, countersigned by the town clerk, and fixed in the town hall, and the office thereupon becomes vacant; and, although it will not become vacant until all their prescribed conditions have been fulfilled, whenever the writing has been delivered to the town clerk and the fine has been paid, the resignation as such is irrevocable. (See *R.* v. *Wigan Corporation* 14 Q. B. D. 905.)

It is further provided that on any disqualification taking effect the disqualified councillor may not resign.

Resignation by President.—If the term of office of President ceases the moment he ceases to be a councillor (*vide* note 18, sec. 23), then the resignation of a councillor, who is also a President, and wishes to resign all office, would be deemed to be a resignation of his office of President also, but it is desirable that this should be made clear by a provision here that "The resignation by a councillor of his office of councillor shall, if he also holds office as President or Vice-President, be deemed to include the resignation of such office."

If, however, the view stated in the G. R. referred to in note 18 is correct, such a councillor in resigning must clearly state that he resigns both offices, otherwise if he resigns only as councillor, he will not be held to have vacated the office of President.

Resignation by ex-officio councillors and presidents.—Though an *ex*-officio councillor or president when giving over charge of his office to his successor *ipso facto* vacates office as councillor and so also as President (*vide* note section 10 (1) (*b*) (ii)) and therefore need not send in a resignation, yet compliance with the requirements of the section is desireable. The rule in Sind issued by the Commissioner-in-Sind's No. 1302 of 8th September 1886, Gen. Dep., is that "when an official gives over charge of an office in consequence of his appointment to which he was also nominated a member of any Local or Municipal Board, his letter reporting the relinquishment of charge of such office shall be interpreted to also convey resignation of his seat on the Board or Boards above referred to." In those cases however in which the letter does not go on to the Commissioner ordinarily, it is desirable that it should be so sent on if it

is the resignation of a president. The orders in G. R. 1579 dated 4 May 1886 G. D. should now be read in the light of the amended provisions of the Act so far as concern municipalities.

In *all other cases* a seperate notice should be sent to the President, or to the Commissioner (through the Collector) as provided in the section.

The Panjab Act provides that every resignation shall be reported, as soon as may be, to the Deputy Commissioner.

Resignation of Vice-President.—The section has omitted to provide for this, but as its effect is only directory, it may be followed with propriety and the notice sent to the president, so that early action may be taken for the election of another councillor.

16. [2]The Governor in Council, [3]in the case of City Municipalities, and the Commissioner in other cases, if he thinks fit, [4]on the recommendation of the municipality, may [5]remove any councillor elected or appointed under this Act, [6]if such councillor has been guilty of [7]misconduct in the discharge of his duties, or of any [8]disgraceful conduct, or [9]has become incapable of performing his duties as a councillor.

[1] Liability to removal from office.

1 **Origin of section.**—Compare with sec. 23 (7). This is taken from the Bengal Act (except as to incapacity to perform duty), which empowers the Commissioner to act, and includes in this power many of the things which by sec. 15 are disqualifications. An order is appealable to the Local Government.

This section is new as regards the general body of councillors, but the old Act, section 24, contained somewhat similar provisions with regard to a president and which provisions are now re-enacted in section 23 (7). The object of the section is not only to give power to remove a source of public scandal, but to prevent respectable citizens from declining to join a municipality on account of the misconduct of some of its members.

2 **Governor in Council.**—In Sind this means the Commissioner in Sind. (*Vide* section 3 (3).

3 **In the case of * * * cases**—There words have been added by Bom. Act III of 1915.

The Decentralization Commission suggested that this power should be left in the hands of the Commissioner, but the delegation is now made to that officer in the cases stated only.

4 **Recommendation of Municipality.**—Action under the section, it will be observed, will be taken only on the initiation of the municipality, who are thus left arbiters in the first place, of what is misconduct or disgraceful conduct, or incapacity within the meaning of the section. This provision seems desirable, otherwise by asserting such a censorship over individual councillors, Government might be assuming an unnecessary responsibibity for the mal-administration of the municipality.

The old Act of 1873, sectitn 7, (3) which was repealed by Bombay II of 1884, provided for removal by the Governor in Council. If a Municipality does not through perverseness take the initiative in a case in which they should do so, Government can take action ultimately under section 179.

Continuance in office dangerous or undesirable:—The *Punjab Act* provides for removal "if his continuance in office is dangerous to the public." The C. P. Act says "his continuance in office is undesirable in the interest of the public and the municipality." The Madras Act has "if his continuance in office is dangerous to the public peace or order" "or likely to bring the municipal administration into contempt," and it adds "Provided that when the Governor in Council proposes to take action under this clause he shall not pass any orders without giving an opportunity to the officer concerned and shall also record the reasons for such action." It also gives power to remove a chairman who without sufficient excuse in the opinion of the Governor in Council omits or refuses to carry out any resolution of the council.

5 **Remove any councillor.**—Removal under this section operates as a disqualification for all future elections until Government remove the disqualification. sec. 15 (1) (*a*) (iv)

Under the Madras Act "the Governor in Council may prescribe a period during which such councillors so removed shall not be eligible for re-appointment or re-election." Under the Panjab Act, the disqualification for re-election remained, unless and until the Government otherwise directed.

The power of removing for reasonable cause corporate officers and corporators, or of *amotion* as it is termed in law, is by the common law of England incident to every corporation 2 *Kyd on Corporations*, p. 50. See Halsbury's Laws of England, Vol. 8, p. 330.

As an order of removal under this section is a 'disability' under section 15 (2) and under section 33 (8) it *ipso facto* creates a vacancy in the office of President or Vice, if the councillor holds such office, it will not be necessary to pass an order of removal also under section 23 (7).

A councillor may escape the ignominy of a removal and its consequential permanent disqualification (unless an order is otherwise made) by resigning. (*Vide* note section 15-A.)

Suit for damages for wrongful removal.—In the case of *Vijaya Ragaon and the Secretary of State for India in Council*, I. L. R. 7 Madras 466, it was held, under section 9 of the Towns Improvement's Act (Madras III of 1871) which contains similar provisions to this section, that in a suit for damages by a municipal councillor of wrongful removal from office, misconduct not having been proved, the plaintiff was entitled to damages. In that case it was contended that there was a discretion vested in the Governor in Council to remove a councillor without any proof (such as a Court would require) of the fact of misconduct or neglect, and that the Governor in Council was the proper judge of whether the act or conduct justified the removal, even though such act or conduct did not amount to misconduct. The Court, however held that this could not be the right construction of the section, as then the words "for misconduct or neglect of duty" were meaningless. It was only when the fact of misconduct really existed and was ascertained, that there was any discretion vested in the Governor in Council to remove or not. It might be that, even though misconduct or neglect, &c., by the councillor was ascertained to really exist, yet it might not be politic, convenient, or necessary to remove the councillor, and accordingly the Governor had discretion in that case. This ruling is referred to in I. L. R. 36, Mad. 120.

Suit to set aside order of removal.—Plaintiff was elected a councillor, but subsequently it was found he had been, prior to the election, convicted under sec. 504 I. P. Code for insulting one of the candidates at a municipal election. On this fact being reported to Govt. and enquiry being made as to the validity of the election, Govt. passed an order declaring that the conviction in question implied such defect of character as unfitted plaintiff to be a councillor, and his appointment was moreover likely to bring municipal administration into contempt. His election was accordingly set aside. Plaintiff then sued for a declaration that he had been duly elected, that the Govt. order was *ultra vires* and illegal, and also for damages. *Held*, that as the Act prescribes as a disqualification a person who has been convicted before election of an offence which in the opinion of the Governor in Council implies a defect of character which unfits him to be a councillor, and sec. 19 give power to remove him, he is disqualified even though the opinion of the Governor in Council is arrived at after the election. The mere fact that the defect existed before the election is sufficient to disqualify.

The fact that Govt. had on a prior occasion refused to disqualify plaintiff at a previous election for the said conviction, whether or not such refusal was based on the ground that the conviction was not a disqualification, is no bar on his subsequently being re-elected, to the invalidation of the election on the ground of such conviction. (*Secretary of State for India* v. *Venkatesalu Naidu*, (1907) 30 Mad. 113.)

N.B.—This ruling is under the special provisions of the Madras Act (see note 3 sec. 15) but would not so far as the conviction was proir to the election apply to this Act. (Vide notes 26, 32 sec. 15.)

Under the Madras Act the Governor in Council has power to remove a councillor if his continuance in office is likely to bring the municipal administration into contempt, provided an opportunity of explanation is given to the councillor. If Government made the order of removal on some major grounds, it cannot be said that the councillor could not be removed because he was not given the opportunity of explaining some minor grounds which were stated. (*Chelva Pesumal* v. *Secretary of State for India* 7 M. L. J. 245; (1910) M. W. N. 271; 1910, 6 Ind. Cas. 6041).

6 **If such councillor guilty.**—There must be some evidence of guilt on which action is taken. If no evidence whatever then a civil suit will lie to set aside the order as *ultra vires* (vide note 5); but so long as there is some evidence the Court will not go into the question as to whether that evidence was sufficient to justify the order. The section vests the Governor in Council with a certain amount of discretion and so long as that discretion is not exercised arbitarily the Civil Court has no power to interfere. (I. L. R. 30 Mad. 113 noted s. 16.)

7 **Misconduct in the discharge of his duties.**—"*Misconduct*," "*disgraceful conduct*".—These words are taken *verbation* from Bengal Act of 1884. The Act does not define the expressions but leaves it to the municipality, which desires action to be taken, to say what conduct is such as to justify the proposal for removal.

In the discharge of his duties.—Any misconduct the councillor was guilty of *prior* to his election on entering upon his duties would not be a ground for his removal. The misconduct must also relate to the discharge of his duties as councillor. Misconduct in respect of any other matter while holding the office of councillor would not bring removal into operation, unless such misconduct amounted to 'disgraceful conduct,' but as to this see next note.

The Madras Act s. 19 gives power to Government "by notification" to remove a councillor (1) if he was disqualified *at the time of his appointment* as councillor under sec. 10-A (corresponding to sec. 15 of this Act). In regard to this Miller J. in 30 M. 113 at p. 117 says "I must say I do not quite appreciate the value of s. 19 (1) (i). The validity of the election, as regards the candidate's qualifications, can be tested under the rules, and it seems to me that a candidate who has survived that test, or whose disqualification has been over-looked, might well be allowed to retain his seat once the time for questioning his election was passed." See note 34 s. 15.

8 **"Any disgraceful conduct."**—This disgraceful conduct unlike "misconduct" does not relate to "the discharge of his duties" only, but to conduct as an individual.

The object of the Legislature is doubtless to provide for a means of depriving of office, a councillor whose conduct as an individual was such as to bring disgrace upon the municipal body of which he was a councillor.

At any rate the disgraceful conduct should it seems be confined to such as arises *after* the councillor's election, and not to something that he may have been guilty of prior thereto. The fact that the electors have set their seal to him by electing him should be considered good enough to cover any such *past* disgraceful conduct. See also note 26, sec. 15 as to a councillor not being disabled under section 15 (2) except for something arising during the term of office.

A councillor was found guilty of disgraceful conduct within the meaning of this section. On the day appointed by the municipality to consider the question of his removal, he resigned his seat. The municipality, however, passed a resolution requesting Government to disqualify him. Government however considered that as he had ceased to be a councillor he could not be removed from an office which he no longer held. (G. R. 1571 of 1st April 1910, G. D.) See note 1, section 15-A.

9 **Has become incapable of performance of duties.**—This incapacity refers to some mental or physical or legal disability which incapacitates a person from acting in the office, such as insanity, paralysis, deafness, and the acceptance by non-official member of an appointment under Government. A person who is transferred on duty to another district, or who takes furlough, is not "incapable of acting,": the capacity still remains to him, but it is unlikely that he will return to exercise the office. (G. R. 2326 of 2 July 1886, Gen. Dep.)

The correctness of this G. R. in so far as it relates to a councillor becoming a Government servant, or his transfer, or taking furlough, is open to question. The *crux* of the point lies in whether the person *ceases to be a councillor*. The acceptance of a Government appointment *ipso facto* immediately has this effect (section 15 (2) (*d*)); so also, if *ex-officio*, he is transferred (section 10 (1) (*b*) (ii) and note thereto) or takes furlough extending for more than 6 months (section 15 (2) (c)). A person is 'capable of performing his duties' only if he is a councillor; if he ceases to be one, he is 'incapable' until his capacity is restored by fresh election or appointment. It will be observed that the Legal Remembrancer in G. R. 3922 quoted in note 11 section 23 argues that "becoming incapable of acting in such office" does mean being absent without leave.

Refusal to act as councillor.—The Panjab, N. W. P., C. P. and Madras Acts provide for removal "if he refuses to act." so also the Bengal Local Self-Government Act of 1885.

The English Act section 40 (3) provides "Non-acceptance of office creates a casual vacancy."

There is no corresponding provision in this Act, nor does section 18 refer to a vacancy in such a case. A refusal to act may take place before a councillor takes his seat or it may be afterwards when he refuses to *continue* to act. The first would be tantamount to 'non-acceptance,' but the 2nd would practically be a resignation and might in practice be dealt with as such. Otherwise the only remedy is to apply section 15 (2) (*c*), if applicable to the circumstances, or wait the 4 months before he forfeits his seat under section 15 (2) (*e*).

Neglect of duty by a president or vice-president renders him liable to be removed from such office, but he still remains a councillor. See section 23 (7.)

[1]Term of office.

17. Councillors nominated or elected at a general election under this Act shall, save as provided in the next following section or unless they become

in the meantime disabled, or are removed from office under section 16, or section 179, hold office for a term of three years, extensible by order of the[2] Commissioner to a term not exceeding in the aggregate[3] four years, if on any occasion the Commissioner shall think fit, for reasons which shall be notified together with the order in the ***Bombay Government Gazette***, so to extend the same.

1 **Origin of section.**—This is section 18 of Bombay Act II of 1884, slightly altered.

Under the English Act on the 1st November (which is the ordinary day of election of councillors) in every year ⅓rd of the whole number of councillors go out of office, and their places are filled by election.

Compare with sec. 14 of the Local Boards Act. (*Vide* Cumming's Local Board Manual page 24 and notes.)

This section needs redrafting. To start with it is incorrect to speak of "councillors nominated at a general election;" they are as a matter of fact nominated some time after. Next it gives 4 cases of the term of office ending before the completion of the full 3 years. Now the reference to "the next following section" has no sense, for sec. 18 has nothing to do as to when such a councillor's term ends; it does not say "In the event of the death &c., &c, there shall be a vacancy," but that the vacancies created "in the event of death &c., &c.," shall be filled up in such and such a way, and then it goes on to state what is the term of office of the *succeeding* councillor, which has nothing to do with the term of office of "Councillors nominated or elected at a general election." Further the words "unless they become * * section 16" are also unnecessary, as their meaning is included in the preceding words "in the next following section," for sec. 18 refers also to "disability or removal of a councillor." Not only is the enumeration defective but it is unnecessary. The section tries to say too much and fails to say all it wants to. It would be quite enough to follow the wording of the section in the English Act and say "The term of councillors shall be 3 years, extensible &c., &c." If desireable, after 'councillors' add the words "unless they cease at any time during the term to be councillors."

2 **Commissioner.**—*Vide* section 3, (3). Under the old Act this power rested with the Governor in Council.

3 **Four years.**—Under the old Act the term was 3 years, extensible to 3½ years, but experience showed that the additional 6 months was too inconveniently short a period. Under the Panjab Act, section 6, *ex-officio* members hold office as long as the office lasts until Government directs otherwise; the other members' term "shall not exceed 3 years" and may so be fixed as to provide for retirement by rotation. The N. W. P. Act provides that the term be fixed by rules subject to a similar maximum. The Madras Act fixes the term at 3 years.

Commencement of term.—The Act makes no provision for this but the date is given in the notification under sec. 11 and is generally the 1st April of any year. Under the Bengal Act of 1884 any councillor shall vacate his office at the end of 3 years from the date of his appointment or election as such" councillor, and under sec. 26 the term of 3 years "shall be held to include any period which may elapse between the expiration of the said 3 years and the date of the first meeting of the body of Commissioners newly appointed and elected of which a quorum shall be present."

18. In the event of the death, [2]resignation, [3]disqualification, [4]disability or removal of a councillor [5]previous to the expiry of his term of office, the vacancy [6]shall be filled up as soon as it conveniently may be, by the election or appointment, as the case may be, of a [7]person thereto, who shall hold office so long only as the councillor in whose place he is elected or appointed would have held it if the vacancy had not occurred.

[1] Casual vacancies how to be filled up.

1 **Origin of section.**—This is section 19 of Bombay Act II of 1884, slightly altered, and is on the lines of section 9 of the Bombay City Act, which also provides for "the event of non-acceptance of office by a person elected or appointed to be a councillor."

Some provision should be made for this by giving power under sec. 16 to remove him if he refuses to act. As it is if a councillor refuses to take office there is no vacancy which the Act recognizes, and it must remain unfilled at any rate until the lapse of 4 months absence from the meetings disables him under sec. 15 (2) (e). See note 9 s. 16.

This section enumerates cases in which a vacancy arises. Is the enumeration intended to be exhaustive, so as to exclude from the operation of the section any other case of vacancy, such for instance as a councillor refusing to act in the office. If so, why exclude such a case? Then again why make any enumeration at all? It is unnecessary, for all the cases referred to are already (where necessary) stated in other parts of the Act to create a vacancy. "Death" creates its vacancy without the necessity of any legal enactment; 'resignation' implies that the office is vacant; 'disqualification,' the word should be omitted from here, *vide* note 3; 'disability' by sec. 15 (2) makes "the office become vacant," and so does 'removal.' The section would be far simpler, and equally effective, if it said "In the event of any vacancy in the office of councillor it shall be filled &c." The object of the section is to provide for the manner in which casual vacancies are to be filled, and the term of office of the councillors who so fill them. It has nothing to do with the cases in which a vacancy occurs, nor whether the same councillor or another should fill it, except that some person must necessarily be elected or appointed to fill it. The draftsman started with giving the cases in which vacancies arose, thinking he was enumerating them all, but not meaning that the section should apply only to those enumerated. The section does not say "In the event * * there shall be a vacancy which shall be filled up &c.," but that the vacancies created in the specified events shall be filled in such and such a way. See further note 7.

2 **Resignation.**—See sec. 15-A.

3 **Disqualification.**—This word should be omitted now since by the amendment of the section of the old Act, by sec. 15 disqualifications are merged in disabilities. There is no vacancy caused by a disqualification but by a disability. The only case in which a disqualification results in a vacancy is that referred to in sec. 22 (3) and 22 (2) provides for a fresh election.

4 **Disability or removal.**—The words have been added, and the words "becoming incapable of acting" in the old section have now been omitted and inserted in section 16 where they form a ground for removing a councillor. If any councillor through insanity, paralysis, deafness, &c., becomes incapable of performing his duties as such councillor, he can now be removed under section 16.

Removal.—This word is also unnecessary here for sec. 15 (1) (a) (iv) already puts it among the disqualifications which sec. 15 (2) converts into a disability in which it is thus included.

5 **Previous to the expiry of his term of office.**—These words are redundant and unnecessary. There can be no vacancy except during 'his term of office'; after 'expiry of his term' he is no longer a councillor.

6 **Shall be filled up.**—This is obligatory. Under the Panjab Act, section 12, and N.-W.-P. Act, section 14, it is obligatory in the case of an *elected* member, unless the Governor directs that the vacancy be left unfilled. As to appointed members, the filling up is optional with the Governor. Under the Madras Act it is obligatory, unless Government otherwise directs.

If the vacancy is that of a nominated councillor it must be filled by another nominated person, unless indeed Government under sec. 11 (b) direct a reduction in the proportion of nominated councillors. If it is of an elected councillor, and any by-election held fails to give a qualified councillor, apparently another election must be held and continue to be held until some person is elected, as sec. 10 (2) does not apply to casual vacancies.

Under English law the obligation to hold an election may be enforced by *mandamus*. (See *Stratford-upon-Avon* Case (1886), 2 T. L R. 431.) In India this may be done by an application under.

7 **"A person thereto":**—This section after stating some cases in which a casual vacancy occurs, goes on to say "the vacancy shall be filled up by a person who shall hold the office so long only as the councillor whose place he is filling would have held it". The question arises whether the "person" may not be the same person who has been disabled, that is, he may be re-elected or re-appointed to the vacancy created by himself. Of course where the person is dead there must be 'another' person. Does the section mean that in every case there must be "another person"? As pointed out in note 1 the object of the section is to provide for the filling up of casual vacancies, and to indicate the term of office of such councillor. It is not intended to specify the cases in which the person must be the same or another. The expression "so long only as the councillor in whose place, &c.," is used here merely to indicate the period of the term of the succeeding councillor, and is in no way inconsistent with the inten-

tion that the person may not be the same. Does the Act elsewhere indicate that there is no necessary implication that the person must be another? Sec. 23 (8) in dealing with these identical vacancies in the case of a president, &c., says they are to be filled by "another councillor." Why does the Legislature make it clear in such cases that the person must be another, and not so in the case of a councillor, unless it was considered that in the former cases of important office-bearers it was desirable that a different person should fill it, whereas in the case of one who was merely a councillor this was unnecessary.

This view is supported by the construction of sec. 15 (2) contended for in note 32 thereto, *viz.*, that the disabling of a councillor does not necessarily render him disqualified for any subsequent by-election, even the one created by his own disability. Why should the intention be attributed to the Legislature to preclude a councillor, who has for any reason been disabled, from re-election until the whole period for which the council has been appointed had expired? If this had been the intention, surely it would have used plain, and not ambiguous language. Under the English Act a councillor on becoming, for instance, bankrupt, or being absent for longer than the statutory period, or acquiring an interest, ceases to be a councillor, but it is provided that when the bankrupt has got his discharge, the absent one returns, or the disqualifying interest ceases, the disqualification "shall as regards subsequent elections cease." So under this section there is no reason why he should not be allowed to take his chance at the by-election. None of the things which under sec. 15 (2) operate to disable a councillor is such as should disqualify him at the by-election, except those which in themselves carry a moral turpitude which and ordinarily would unfit an individual as a councillor, but these are by sec. 15 (1) permanent disqualificatians unless Government order otherwise. If there is any other case in which the disqualification should operate for a more or less lengthy period, such as that referred to in the note to sec. 15, it easy enough for provision to be made in the Act.

Again where is the sense of excluding from a by-election, and yet not from a general election, when the latter may take place soon after the vacancy has occurred? If it is desirable to penalise a councillor who has been disabled for some reason, it should be for a certain period, and not one so indefinite that it may be for 3 years or more, or only a few weeks.

The Bengal Local Self Government Act of 1885 recognises that a resignation does not necessarily disqualify for re-election, as it specially provides that after a resignation has been accepted "he shall not be re-elected until the expiration of the term for which he would have held the office but for his resignation."

The Bengal Municipal Act distinctly states that casual vacancies created by death, resignation or removal" are to be filled by" another person. "The Madras and Panjab Acts say by" a new councillor. "By sec. 40 of the English Act the person elected to a casual vacancy" shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office."

Re-eligibility of councillors.

19. A person who has already been elected or appointed a councillor on one or more occasions shall, if otherwise duly qualified, be eligible at any time for re-election or re-appointment.

Re-eligibility—This is section 17 of Bombay II of 1884, and corresponds with sec. 6 (3) of the Panjab Act, and section 8 of the Bombay City Act.

Under section 37 of the English Act "A person ceasing to hold a corporate office (that is, councillor, &c.,) shall, unless disqualified to hold his office be re-eligible," and section 39 after stating the cases in which he becomes disqualified and ceases to hold the office goes on to provide that on the disqualification ceasing he is re-eligible "as regards subsequent elections." (See note 32, section 15 and note 11, section 23.) He is not eligible until he complies with the conditions of re-qualification. (See *Wardwich* v. *Brown*, L. R. 8. C. P. 406.)

"*At any time.*"—That is even for a by-election created by his own disability? See note 32. section 15.

[1]Publication of names of councillors in the *Bombay Govt. Gazette.*

20. The names of all councillors finally elected to any municipality, as well as the names of the nominated councillors,[2] if any, appointed thereto, shall be published, as soon as conveniently may be in the ***Bombay Government Gazette.***[3]

1 **Origin of section.**—This is section 20, Bom. II of 1884, re-enacted.

The Governor in Council now considers that it is no longer necessary to have a separate report and a separate resolution upon each election to each Local Board and Municipality, and is accordingly pleased to direct that separate reports recording the results of such elections should not be submitted to Government in future. Any circumstance of an unusual character may be mentionod in the Collector's Annual Administration Report, but if there is any matter in connection with the elections which, in the opinion of the Collector, calls for immediate special notice or orders, it should be reported to Government at once. (G. R. 2612 of 26th July 1888, Gen. Dep.)

Part I-A of the *Bombay Government Gazette* is specially reserved for all notifications under the District Municipal and Local Boards Acts.

The Panjab Act, section 18, requires all elections and appointments of councillors and presidents to be notified, either by the Local Government or the Commissioner and "no such election or appointment shall take effect until it has been so notified."

2 **If any.**—The words show that the Act contemplates municipalities consisting entirely of elected members. See also note 2, section 10.

3 **Government Gazette.**—This in Sind means the *Sind Official Gazette*. Sec. 3 (19).

The provision as to gazetting is merely directory of the procedure to be followed "as soon as conveniently may be" for the information of the public. It is no where made a condition essential to the valid constitution of a board.

(4) *Municipal Elections.*

General disqualifications of voters.

21. No person who is less than twenty-one years of age shall be entitled to vote at any municipal election.

Origin of section.—This is section 22, Bom. II of 1884, re-enacted.

The age limit is in accord with the English Act. Under the Madras Act the person must have completed the 25 year.

The franchise under this Act is exceedingly wide and does not provide for any of the limitations which are to be found in England. So that every living person not less than 21 years of age is, if qualified under sec. 12, entitled to entry on the Municipal Roll though he be a lunatic, idiot, deaf, dumb, blind &c.; and, provided he can comply with the election rules as to voting, his vote cannot be rejected.

"*Shall be entitled to vote.*"—If this means that even if he is enrolled in the list of voters his vote may be rejected at the polls or struck out on scrutiny, then it is inconsistent with sec. 13 which says "every person enrolled shall be deemed entitled to vote." If on the other hand it is to be read subject to sec. 13, then the words should be altered to "shall be entitled to be entered in the Municipal Roll." See note 4 sec. 13.

Females are not qualified to be elected members (sec. 15), but they are not disqualified as females from voting. The disqualification of females in this section was struck out when the Bill (Act II of 1884) was under discussion by the Legislative Council.

Under the Calcutta Municipal Act 1899 females are *not* qualified to vote though they are in *all* other Indian Municipalities.

In England, though single women may vote at municipal elections (if otherwise qualified), married women may not. (*Reg.* vs. *Harold*, L. R. 7 Q. B., 361).

Aliens and alms receivers.—See note 9 sec. 12.

Lunatics and idiots are subject at common law to an incapacity to vote at an election. A lunatic may however vote in a lucid interval. (*Bridgwater Tucher's case.* (1803) 1 Peck. 108.) Hence it seems that a lunatic has a right to be registered, so far as regards his legal capacity; but there do not appear to be any cases on the point.

An out-law is subject to legal incapacity; so also a person convicted of treason or felony for which he has been sentenced to any term of hard labour or exceeding 12 months without hard labour.

Returning officers and agents, clerks, messengers, &c. if candidates are not qualified to vote at such election.

22. (1) If the [2]validity of any election of a councillor is brought in question by any [3]person qualified either to be elected or to vote at the election to which such question refers, such person may, at any time within ten days after the date of the declaration of the result of the election, [4]apply to the District Judge of the district within which the election has been or should have been held.

[1]Determination of validity of elections.

(2) The District Judge or such other Judge as may be appointed by the Governor in Council on this behalf may, after [5]such inquiry as he deems necessary, and subject to the provisions of sub-section (3), [6]pass an order confirming or amending the declared result of the election, or setting the election aside. [7]For the purposes of the said inquiry the said Judge may summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the [8]costs of any such inquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure. [9]The decision or order shall be conclusive. If he sets aside an election, a date shall forthwith be fixed and the necessary steps taken for holding a fresh one.

Powers of Judge holding enquiry.

(3) (*a*) The Judge, if satisfied that a candidate has, within the meaning of sub-section (4), committed any corrupt practice for the purpose of the election, shall declare the candidate disqualified both for the purpose of that election, [11]and of such fresh election as may be held under sub-section (2), and shall set aside the election of such candidate if he has been elected.

[10]Declaration in case of corrupt practice by a candidate.

(*b*) If in any case to which clause (*a*) does not apply, the validity of an election is in dispute between two or more candidates, the Judge shall, after a scrutiny and computation of the votes recorded in favour of each such candidate, declare the candidate who is found to have the greatest number of [13]valid votes in his favour, to have been duly elected.

[12]Scrutiny of votes and declaration in other cases.

Provided that for the purpose of such computation no vote shall be reckoned as valid if the Judge finds that any corrupt practice was committed by any person, known or unknown, in giving or obtaining it.

(4). A person shall be deemed to have committed a corrupt practice wthin the meaning of the last preceding sub-section,

[14]What is a corrupt practice.

(i) who with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury, to any person, or,

[15](ii) who gives, procures, or abets the giving of a vote in the name of a voter who is not the person giving such vote.

[16]Candidate when deemed to have committed corrupt practice.

And a corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

[17]Promise of individual profit.

EXPLANATION.—A "promise of individual profit" includes a promise for the benefit of the person himself, or any one in whom he is interested. It does not include a promise to vote for or against any particular Municipal measure.

[18]Mere irregularities and informalities not to invalidate election.

(5) If the validity of the election is brought in question only on the ground of an error by the officer or officers charged with carrying out the rules made under clause (*c*) of section 11, or of an irregularity or informality not corruptly caused, the Judge shall not set aside the election.

[19]Disqualification of candidate for corrupt practice.

(6) If the Judge sets aside an election under clause (*a*) of sub-section (3) he may, if he thinks fit, declare any person by whom any corrupt practice has been committed within the meaning of this section, to be disqualified from being a candidate in that or any other municipal district for a term of years not exceeding seven, and the Judge's decision shall be conclusive: provided, however, that such person may, by an order which the Governor in Council is hereby empowered to make, if he shall think fit, in that behalf, be at any time relieved from such disqualification.

1 **Origin of section.**—Clauses (1) and (2) are re-produced from sec. 23 of the old Act with some additions.

All elections valid if not questioned.—The Calcutta and the Bombay City Acts provide "Every election not called in question in accordance with the foregoing provisions shall be deemed to have been to all intents a good a valid election."

Though this Act does not contain such a provision, doubtless the principle of it would be upheld, for it is a well established principle of law that where an Act of Legislature provides a means of redress this ousts the ordinary jurisdiction of the Civil Courts. See the remarks of sale J., in I. L. R. 22, Calc. 717.

Under the English Act every municipal election not called in question within 12 months after the election, either by election petition or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election.

Penal actions and injunctions.—In addition to the common law actions to which any municipal officer or other person who deprives another of his legal rights is liable, in England there are several statutory actions peculiar to elections. Fraudulent conveyances to multiply votes; destroying, defacing, &c., lists, notices, &c.; misfeasance of clerks, returning officers, &c., in their duties; false returns &c.

2 **Validity of election.**—This section does not mention the grounds on which objections can be taken, hence it may be assumed that all or any objections which would invalidate the election may be made, subject to sub-sec. (5) and sec. 13 (2).

The Bom. City Act, section 33 (1), says—"If the qualification of any person declared to be elected for being a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the Commissioner of a nomination or of the improper reception or refusal of a vote, or for any other cause," an elective petition may be brought. I. L. R. 31 Bom. 604 (note 9) held that these words were wide enough to cover the grounds of the objection urged in that suit that the poll was taken on a day other than that originally fixed for the election.

The Calcutta Act, provides that "If there is any dispute as to whether any person whose name is entered in the list is qualified to be elected, or if the validity (here follows the exact wording of the Bombay City Act) an application is to be made to a Judge of the High Court; "Provided that no election shall be called in question on the ground that-(*a*) the name of any person qualified to vote has been omitted from the election roll, or (*b*) the name of any person not qualified to vote has been inserted in that roll, or (*c*) any direction given in Schedule IV (Rules for the election roll) or Schedule V (Rules for conduct of elections) has not been obeyed."

Under the English Act a special "election court" is constituted for the trial of municipal election petitions and there is no appeal from any decision of the court either of law or of fact.

A municipal election may be questioned by an election petition on the following grounds only:—(1) That the election was void by general bribing, treating, undue influence or personation. (2) Void by corrupt practices. (3) That the person elected was at the time of election disqualified. (4) That he was not duly elected by a majority of lawful votes. (5) Void, because of illegal practices, &c., reasonably supposed to have affected the election.

A municipal election may not be questioned on any of these grounds except by an election petition, (45 & 46 Vic. c. 50, section 87 (2); *R.* v. *Morton* [1892] 1. Q. B. 39. Yet if the disqualification of the person elected, though existing at the time of the election, be likewise a disqualification for his holding the office to which he has been elected, his right so to hold office may be questioned by *quo warranto*. (*R.* v. *Becar* [1903] 2. K. B. 693.)

The petition must be prescribed by 4 or more persons who voted or had a right to vote at the election, or else by a person alleging himself to have been a candidate at the election. The time is within 21 or 28 days, according as the ground of the petition, after the day on which the election was held.

Security for costs must be given within 3 days after petition.

When the petition complains of an undue election and claims the office for an unsuccessful candidate, the respondent may seek to prove that the election of such candidate was undue and may call evidence to that effect in like manner as if he were petitioning against the election of such candidate.

A petition abates by the death of the petitioner unless another has been substituted. It does not abate by death of respondent.

If a petitioner applies to withdraw, any person who might have been a petitioner may be substituted, but there can be no withdrawal without leave of the Court and then only after due notice has been given in the borough.

3 "Any person qualified.—*At the election to which the question refers*:—Strictly this would mean to limit the right of appeal, in the case of ward elections, to those entitled to be elected or vote at that particular ward. It seems doubtful however that this was intended when this section was originally framed, though the words "to be elected" seem to imply that while the right is limited to the voters of that ward, as regards *candidates* it extends to the whole electorate, otherwise there would be no need for these words, for all who are qualified to be elected are qualified to vote. In the corresponding section of the Bombay City Act it is "any person enrolled in the Municipal election Roll."

Again, doubtless the words "person qualified to be elected or to vote" are intended to be read subject to sec. 13, as meaning only those persons who are entered in the roll; as they stand however,, any person who can prove that he is "qualified to be elected or to vote" even

though his name has been omitted from the roll, can come in. As this could hardly have been intended the words should be amended as in the Bombay Act.

When this section was first under consideration by the framers of the Bill on the suggestion that this right of appeal should be much more restricted the Legal Remembrancer made the following observations in which Government by G. R. 1696 of 3rd May 1883, Fin. Dep. concurred :—"No serious inconvenience is likely to arise by allowing every person qualified either to vote or to be elected, to appeal against an election. The grounds on which any given election is impeachable must always be very few in number and if, to take an improbable case, every person having a right to appeal against the election did so, all the appeals would be heard and decided together and would give really very little more trouble than the hearing of a single appeal. In practice, however, there are very few persons who are willing to incur either the trouble or the expense of prosecuting such appeals, and it is only an unsuccessful candidate or some one greatly interested in the result of the election, who does so. The limitation of the period within which appeals may be brought to 10 days, is also a safeguard against the serious abuse of the right."

"On the other hand there is an advantage in giving the right of appeal to a large body of persons, as the risk of bribery and corruption is thereby lessened. It would not do to restrict the right to an unsuccessful candidate, because the election of a sole candidate might sometimes be invalid, as, if he were disqualified, or the election was not duly announced or duly conducted, &c., &c."

It was suggested that a deposit of say Rs. 200 or Rs. 500 should be required from the person contesting the election, to prevent frivolous objections being made, the amount to be forfeited at the discretion of the Judge, in accordance with the law in England.

Under the English Act the objector may be one who has himself been objected to, and indeed his name may have been struck out on such objection, nevertheless the application was held good so long as his name was on the list at the time of the service of the notice of objection. (See *Pease* v. *Middlesborough (Town Clerk)* (1893) 1 Q. B. 127; *Barr* v *Chanbur* (1887) 22 L. R. Ir. 264 C. A.)

Collector may apply.—Bill No. 1 of 1914 (Act of 1914) proposed the insertion of the following clause to sub-section (1) :—

"The Collector of the district in which the municipality is situated may, if he wishes to question the validity of the election of a councillor, apply to the District Judge at any time within 2 months after the date of the declaration of the result of the election."

The Statement of Objects and Reasons says :—"In order to enable the Collector to deal with corrupt practices it is necessary that he should be permitted to move the District Court. At present he can only do so in his private capacity as a qualified voter or through some other qualified voter."

This was opposed on the ground that it was objectionable that the Collector should have any thing to do with such petitions, and that it would give a handle to persons who had any grudge against a successful candidate to move the Collector by anonymous petitions. There was it was urged no real need for such a provision as experience showed that persons were only too ready to exercise their rights under the section as it stood. The proposal was therefore abandoned, though the Select Committee reduced the period of 2 months to one and provided that the previous sanction of the Judge was necessary before cognizance could be taken of any offence under sec. 23A. This proposal was therefore dropped. (See note "corrupt practice" below.)

4 **"Apply to the District Judge".**—These applications are liable to a stamp duty of eight annas, under the Court Fees Act, Sch. II, Art. 1 (*b*).

Parties to the application. See I. L. R. 34 Bom. 659; 24 Cal. 207.

The Bombay City Act provides that if the application is for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to the application all candidates who, although not declared elected, have, according to the results declared under sec. 32, a greater number of votes than the said candidate, and proceed against them in the same manner as against the candidate."

Under the English Act any person whose election is questioned, any returning officer of whose conduct a petition complains, may be made a respondent to it. Two or more candidates may be made respondents to the same petition.

Any person who might have been a petitioner in respect of the election in question may apply to the Court to be admitted as a respondent, if, before the trial of the petition, a respondent (other than a returning officer) dies, resigns, or otherwise ceases to hold the office to which the petition relates, or if he gives notice that he does not intend to oppose the petition.