Judge's sanction, necessary to a prosecution.—A District Judge hearing an election petition under the provisions of section 22 of the Bombay District Municipalities Act (Bombay Act III of 1901) is a "Court" within the meaning of section 195, clause (*b*) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (sections 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by section 195 of the Criminal Procedure Code. 1898. *Raghoobuns Sahoy* v. *Kokil Singh* (1890) 17 Cal. 872, followed. (*In re Nanchand Shivchand* (1912) 37 Bom. 365; 15 Bom. L. R., 45.)

5 **Such enquiry as he deems necessary.**—The enquiry may apparently be extended to all matters affecting the validity of the election except that he cannot go behind the Municipal Roll.

It was held that the Judge had power to set aside an election on the ground that the list had not been revised for 2 years. (note 3 sec. 13.)

Election held on superseded rules.—Held, that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed *in pari materiâ* in 1910, which superseded those of 1884, was *ultra vires*, and that inasmuch as the rules of 1884 did not apply and the election was not held under the rules of 1910, a suit would lie in a Civil Court to contest the election, which was rightly held to be invalid. I. L. R., 34 All., 391, referred to. (*Raghunandan Prasad* v. *Sheo Prasad*, I. L. R., 35 All. 308.)

6 **Pass order confirming, amending or setting aside election:**—Under the Bombay City Act if he finds that the election was a valid election and that the person where election is objected to is not disqualified, he shall confirm the declared result of the election. If he finds that the person whose election is objected to is disqualified for being a Councillor he shall declare such person's election null and void. If he finds that the election is not a valid election he shall set it aside. In either case he shall direct that the candidate, if any, in whose favor the next highest number of valid votes is recorded after the said person or after all the persons who were returned as elected at the election and against whose election no cause of objection is found, shall be deemed to have been elected."

English Act sec. 93 (4)—"At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void."

Jurisdiction and discretion of Judge, High Court's power of interference.—A Municipal election petition having been lodged with the Chief Judge of the Small Causes Court, the latter unseated two of the successful candidates and found cause of objection against the candidate in whose favour were recorded "the next highest number of valid votes after those returned as elected." He declined to inquire further into the claims of any other candidate or to declare any other candidate elected, as, on his interpretation of section 33 (2) of the Bombay Municipal Act (Bom. Act III of 1888 as amended by Bom. Act V of 1905), he was not enabled to do so.

The two highest of the other unsuccessful candidates thereupon obtained rules against the Chief Judge under section 45 of the Specific Relief Act (I of 1877), to show cause why he should not proceed to declare them elected under section 33 (2) above mentioned.

Under sec. 45 Specific Relief Act the High Court has power, where it is of opinion that the Judge has refused to consider a petitioner's claim to be deemed to have been elected, and that it was clearly incumbant on the Judge under sec. 33 of the Act (Bom. City Munp. Bom. III of 1888) to do so, it has jurisdiction to direct him to do so. This was not a case where the Judge had refused to exercise a discretion or power vested in him but one where he held that he had no power to consider the claim. If he had said "I have the power but I decline to exercise it in favor of any of the unsuccessful candidates," his decision would have been conclusive.

Held, that the case fell within the general principle referred to in *Ex parte Milner* (1851) 15 Jur. 1037 that where an inferior tribunal improperly refused to enter upon a complaint, a mandamus would issue.

Section 33 having been held to empower the Chief Judge to set aside the election of any number of candidates returned as elected, there was nothing repugnant in construing the section as empowering the Chief Judge to fill up any number of vacancies so created from the list of unsuccessful candidates subject to the provisions of the section.

It was clearly incumbent on the Chief Judge to deal with the question of filling up both the vacancies. He should accordingly proceed to place the unsuccessful candidates in order of valid votes. The two with the highest number of valid votes against whom no cause of objection was found should be declared to be deemed to be elected. If only one qualified, or none qualified, proceedings for filling the vacancy or vacancies would have to be taken under section 34.

An application under section 33 (1) should name the persons whose election is objected to. (In the matter of the Specific Relief Act (I of 1877). and in the matters of Sarafally Mamooji and Jaffer Jusub (1910) 34 Bom. 659; 12 Bom. L. R. 737; 7 Ind. Cas. 858.)

7 **"For the purposes of the enquiry."**—This clause is taken almost literally from paragraph 4, section 75, of the Indian Registration Act, 1877. The old Act merely provided that the Judge might "exercise the powers of a Civil Court."

This does not make the District Judge in respect of orders passed under this section a Court subject to the appellate jurisdiction of the High Court. His orders are therefore not open to revision by the High Court. This is also in accordance with the ruling in *Manavala Goundan* v. *Kumarappa Reddy* I. L. R. 30 Mad. 326 in regard to the non-competency of the High Court to revise the order of District Registrars under the Registration Act.

A District Judge acting under section 23 of Act II of 1884 is not a Court within the meaning of the word in section 622 of the Civil Procedure Code, and the High Court has no jurisdiction to revise his order refusing to set aside an election, nor can it interfere with an order made by him that the apulicant shall pay the cost incurred by the opponent. (*Balaji* vs. *Merwanji*, I. L. R. 21, Bom. 279.) See also 1894, P. J. 87 noted below.

Under the Madras City Act the Presidency Magistrates are to decide questions of the validity of elections. Two applications were made to declare that the inclusion of the petitioner as a candidate was illegal. The Magistrate allowed the application. Petitioner then moved the High Court to revise the order.

Held, the High Court has no jurisdiction to revise an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1904), whereby a Magistrate may decide as to the competency or otherwise of a candidate for a Municipal election, just as much as it has no jurisdiction to revise a similar order made by a Collector under the District Municipal Act to decide such questions. The Magistrate is not a Court subject to the appellate jurisdiction of the High Court within the meaning of that word in section 15 of the Charter Act (24 & 25 Vict., c. 104). He is in the position of a referee between the President of the Municipal Corporation and the candidate. 23 M. L. J., 591 distinguished as there the Magistrate illegally exercised jurisdiction and so prevented the High Court from exercising the jurisdiction that it did have in the matter. I. L. R. 21 Bom. 279 followed. I. L. R. 38 Cal. 547 referred to.

(*Vijiaraghavulu* v. *Theagoraya Chetti* (1815) I. L. R. 38 Mad., 581; 25 Ind. Cas. 345.)

Even if the Presidency Magistrate considers irrelevant matters he cannot be said to have acted outside his office or that there is any other reason why his procedure should be reviewed by the Court. (*In re* v. *Pillai and Mad. City Municipal Act*, (1914) 24 Ind. Cas. 134.)

8 **Costs.**—In the case of *Ramlal* v. *Bhagubhai* (2 Bom. L. R. 960), it was held that a District Judge was authorised under section 23 (II of 1884) to award costs of the inquiry and the order of the District Judge as to costs was capable of being enforced by a separate suit.

Nor could the High Court interfere with an order made by him that the applicant should pay the costs incurred by the opponent. (I. L. R. 21 Bom. 279.) This followed the ruling in 1894 P; J. 87 *Jaganath Bensava* v. *D'Souza* in which it was held that the High Court would not interfere with the Judge's order dismissing an application to set aside an election on the ground of defendant's disqualification.

Under the English Act at the time of presenting the petition or within 3 days thereafter the petitioner must give security for all costs, charges and expenses which may be payable by him to any witnesses summoned on his behalf or to any respondent. Security by money deposit or recognisance, and to such extent as the Judge may determine.

All the costs of a petition or incidental to it, or of any proceedings in connection therewith, are to be borne by the parties in such manner and proportion as the election court may determine. In particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections, on the part either of the petitioner or of the respondent, and any needless expense incurred or caused by either of the parties, may be ordered to be defrayed by the party by whom it has been incurred or caused, whether such party is or is not successful on the whole.

The discretion of the election court in dealing with costs is absolute, and cannot be interfered with after it has been exercised.

If upon the trial of a petition it appears to the election court that it has not been proved that a corrupt practice has been committed in reference to the election in question by or with the knowledge and consent of the respondent, and that the respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may

make one or more of the following orders with respect to the payment of the whole of the costs of the petition, or of such part of the costs as the court may think fit:—

(1) If it appears to the court that corrupt practices have extensively prevailed in reference to such election, the court may order the whole or part of the costs to be paid by the borough; and such costs are to be paid out of the bourogh fund.

(2) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by such person or persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to such offence or to such person to be paid by such person.

9 **Decision shall be conclusive.**—When this clause was under discussion in the Select Committee, it was at first proposed that an appeal on points of law should be provided for in all elective suits. But it was contended with great force that feelings in connection with these elections are sometimes so much embittered that in a large number of cases men would be willing to take advantage of every possible provision to give trouble to their opponents and an enormous amount of litigation would, as a consequence, ensue. The proposal was therefore dropped, but it was urged that at least one appeal should be provided for in the case of those who were declared disqualified for any particular period under this clause. It was said that such a disqualification, cast a great stigma on a person's character, and as under the clause, a corrupt practice is committed by a candidate, not only when it is committed by himself, but also when it is committed by any person acting under his authority, this meant that sometimes the responsibility for a corrupt practice might be merely technical. It would, it was said, be a great hardship in such cases not to give the right of appeal to the High Court. It was also urged that as it was not impossible for one of the agents generally employed at these elections to be bought over by the candidates who find they have no chance of success, and this agent might be induced to get certain votes recorded in favour of the candidate by whom he was employed and thus enable the defeated candidate to bring forward a charge of corruption on account of the fraudulent votes recorded for him by the agent, many really capable and respectable persons would be discouraged from offering themselves for election, seeing that, without an appeal, they would be debarred from seeking election for 7 years. The matter was considered by the Law officers of Government and it was found that there were practical difficulties in the ways of permitting an appeal to the High Court. The proviso to this clause was then inserted in order to give relief in cases deserving it.

The Select Committee on the Bill which became the Amending Act of 1914 pointed out that in England appeals lie to the High Court on points of law involved in election petitions and recommended that this section be amended, so as to admit of appeals on points of law to the High Court from the orders of the Judges in such inquiries, the period allowed for appeal being made a short one. As the proposal affected the jurisdiction of the High Court the committee refrained from dealing with it in the Bill.

This amendment appears to be necessary as cases have occurred where the finding of the Judge was obviously wrong, but the municipality had to accept it.

Civil Court's jurisdiction in election matters.—Sec. 42 Specific Relief Act provides that "any person entitled to any legal character, or to any right to any property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled."

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

Under the English Act if an election is questioned on any of the grounds set forth in the Act, it *must* be by an election petition, and no civil suit would lie.

Jurisdiction where excluded.—Under sec. 33 of the Bombay City Act the Chief Judge has jurisdiction to determine the validity of a contested election, and so he is the tribunal appointed by the Act for that purpose. But where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no order of the jurisdiction of the ordinary Courts, for they never had any; there is no change of the old order of things; a new order is brought into being.

Here not only is the Chief Judge appointed the tribunal, but it also is expressly provided that his order shall be conclusive, and that every election not called in question in accordance with the provisions of section 33 shall be deemed to have been to all intents and purposes a good and valid election.

The jurisdiction of the Courts can be excluded, not only by express words, but also by implication, and there certainly is enough in section 33 of the Municipal Act for this purpose; for there is no right which the plaintiff can at this stage assert as the subject of this suit, which is not subject to the condition that its essential basis must depend on the decision of the tribunal created for that purpose.

With regard to the inconveniences that the opposite view would involve, I may point out that, while it is provided that an application to the Chief Judge must be within fifteen days after the result of the election has been declared (with the purpose no doubt that all questions should be raised and, if possible, determined, before the day for retirement), there would be no such limitation on the time within which a suit might be brought; and a deplorable uncertainty might thus be created as to the Corporation's constitution and proceedings.

Then again, if the High Court has the jurisdiction suggested by the plaintiff, there might be a conflict between the view of this Court and the order of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail.

The Vestry of St. Pancras v. *Batterbury* (1857) 2 C. B. N. S. 477; *The Queen* v. *County Court Judge of Essex*, (1887) 18 Q. B. D. 704 at p. 707; *Cleg, Parkinson & Co.* v. *Earby Gas Co.* (1896) 1 Q. B. 592; *Barraclough* v. *Brown*, (1897) A. C. 615; *Grand Junction Waterworks Co.* v. *Hampton Urban Council*, (1898) 2 Ch. 331; *Howes* v. *Turner*, (1876) 1 C. P. D. 670; *Line* v. *Warren*, (1885) 14 Q. B. D. 548 referred to. *Held* that the validity of the election being questioned on the ground that the election was held on a date later than that originally fixed and that being a ground on which an application would lie under the Act, the Court had no jurisdiction. (*Bhaishankar* v. *The Municipal Corporation of Bombay*, I. L. R. (1907) 31 Bom. 604; 9 Bom. L. R. 417.)

Plaintiff's election was declared invalid on the ground of bribery and corruption after an inquiry under rule 36 (corresponding to this section 22). He then brought a suit for a declaration that he was duly elected, and for an injunction restraining the municipality from holding a fresh selection. *Held*, that the order passed after enquiry and based on proper grounds (*i.e.*, those set forth in rule 35) and otherwise complying with the requirements of the rules framed under section 250 of Madras Act IV of 1884 cannot be questioned in a civil suit, but is conclusive as far as the result of the election is concerned. *Bhaishankar* v. *The Municipal Corporation of Bombay*, [(1907) I. L. R. 31 Bom., 604 at page 609], followed. Maxwell on 'Interpretation of Statutes,' 4th Edition, p. 197, referred to. *Vijaya Ragava* v. *The Secretary of State for India*, [(1884) I. L. R., 7 Mad. 466], *Subhapat Singh* v. *Abdul Gaffur*, [(1897) I. L. R., 24 Cal., 107], *Lalbhai* v. *The Municipal Commissioner of Bombay* [(1909) I. L. R., 33 Bom., 334], distinguished. *Percuriam.*—The status of a Municipal Councillor is the creation of section 10 of Act IV of 1884, and the creation is subject, *inter alia*, to the conditions imposed by the Election Rules framed by the Governor in Council under section 250 of the Act and invested by clause (3) with the force of law. One of these rules is Rule 36, the election gives the candidate elected no vested status, as the election is liable to be declared invalid; an invalid election can confer no status whatever. The words "appointed by election" in section 10 refer only to a valid election, *i. e.*, one which is not set aside under rule 36. *Semble.*—If an order is passed without any enquiry at all or is based on grounds other than those set forth in rule 35 a suit would probably lie to set it aside as *ultra vires*. A suit for damages in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings though based on the same facts. The former may be decreed, while the latter may not. (*Nataraja Mudaliyar* v. *The Municipal Council of Mayavaram*, (1913) I. L. R., 36 Mad., 120; 21 M. L. J., 878.)

Note.—Plaintiff wanted to raise in the High Court for first time the question of the rules being *ultra vires*, but the Court refused to allow this at that stage.

No appeal from order of Election Court.—Under the U. P. Act and rules the validity of an election can only be questioned by a petition presented to a competent court.

In I. L. R. 34 All. 391 it was held that the "competent Court" being the Civil Court it was the proper Court to entertain the suit for a declaration that the election was invalid. This was followed by I. L. R. 35 All. 308.

In I. L. R. 35 All 450 *Khunni Lal* v. *Raghunandan Prasad*, plaintiff brought an election suit under the rules in force before the "competent Court" *viz*: the Sub-Judge, who dismissed

it. He then appealed to the District Judge who, following *Sundar Lal* v. *Mahomed Faiz*, 16 Oudh, Cases 36, held no appeal lay as the 1st Court's order was not a decree, and the Municipal Act gave no right of appeal against an order. On 2nd appeal *held* that the order was not a decree and so not appealable. *Held* (1) that the provisions of section 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules "generally for regulating all elections under the Act," were wide enough to include rules for the filing and decision of election petitions; and (2) that no appeal lies from the order of a "competent court" passed on an election petition under rule 42 of the rules framed by the Local Government under section 187 (1), clause (*h*) of the Act. I. L. R., 35 All. 450, followed. 16 Oudh Cases, 36, approved. (*Nand Ram* v. *Chote Lal*, I. L. R., 35 All. 578.) See also 1894 P. J. 87, note 8 *ante*.

Cases in which Civil Court has jurisdiction.—Where the District Judge had acted *ultra vires*, or had made an order without any enquiry at all. *Vide obiter dictum* in I. L. R. 36 Mad. 120 noted above where the Judge wrongly thinking he had no power to pass an order in respect of an election petition, refused to pass it. See I. L. R. 34 Bom. 659 note 6.

10 **Corrupt practice by "a candidate"**—This and the subsequent sub-sections are adapted from 17 and 18 Vic., chapter 102, sections 2 and 3, an Act to consolidate and amend the laws relating to bribery, treating, and undue influence at elections of Members of Parliament; also 35 and 36 Vic., chapter 33, sections 24 and 46; and 47 Vic., chapter 51, section 5, being Acts for the better prevention of corrupt and illegal practices at Parliamentary elections.

In introducing these changes in the law, the legislature was influenced by the following considerations, *viz*:—(1) that only the election of the candidate by whom or on whose behalf the corrupt practices have been resorted to, should be set aside and not necessarily the whole election; (2) that when it is established that improper votes have been given, but not with the approval or cognizance of the candidate in whose favour they are given, such votes should be pronounced invalid, but the election should not, if otherwise good, be set aside. (3) That when persons fraudulently represent themselves as qualified voters, and get their votes recorded without the cognizance of the candidate, it is they or their abettors and not the candidate who should be made to suffer, save by the loss of the votes improperly given.

The Special Committee came to the conclusion that the provisions of the English Act on the subject of 'treating' were hardly suitable to elections in this country, and though in view of certain practices alleged to have been followed in K—, it had been suggested that the word 'gratification' might be inserted in the clause between 'money' and 'valuable consideration,' a majority of the Committee were opposed to that course, fearing that it might open a door to many malicious prosecutions.

The last 5 words of this clause (*a*) would imply that the Judge may enquire into corrupt practice by a candidate other than the one who has been elected. As every unsuccessful candidate may be made a party to the proceedings such a matter would be relevant, but, if not a party, apparently no order could be made in regard to him. (See further note 19.)

11 **"And of such fresh election."**—These words imply that in the absence of such a declaration the candidate is entitled to stand at the by election necessitated by his own disqualification for the election just held. See note 32 sec. 15.

12 **Scrutiny of votes.**—The object of a scrutiny is to ascertain who has had a majority of legal votes A respondent whose election is proved to be void may still continue the scrutiny, with the object of showing that the person for whom the seat is claimed has not obtained a majority of lawful votes. (*Norwich Election Petition* (1869) 19 L. T. 615 at p. 620.) Similarly if a petitioner be proved to be not qualified for election, he may still continue to show the respondent had not a majority of lawful votes. (*Southampton Bor. Case* 1 O. M. & H. 222 at p. 225; *ibid* 213; *ibid* 181.)

The production from proper custody of a ballot paper, is *prima facie* evidence that the person who voted by that paper is the person referred to in the register under that number.

If the result of the scrutiny is the finding of an equality of votes given for the different candidates the election is rendered void. (*Cirencester Division Case* (1898), 4 O'M & H. 194, 199.)

A misdiscription whether of name or place, does not invalidate the vote of the person so misdescribed, if he is the person whom the overseers intended to place on the register. Similarly, where through a mistake of a polling clerk, a ballot paper with a wrong number has been received by an elector, his vote is not invalidated. (*Ibid* 4 O'M. H. 175.)

Where a man and his son have both the same name but the former is not qualified to vote whereas the latter is, and it is the latter who does really vote, the vote will be held good as the presumption is that the overseers intended to enter the latter. (See *Finbury Case*, *supra*.)

13 **Valid votes.**—A vote is not valid if it is proved to have been given or obtained by a corrupt practice which sub-sec. 4 says is the result of bribing or intimidation or personation. The Judge cannot go into the question whether the voter was or was not qualified to vote as entry of his name in the Roll is conclusive as to that.

In England also the register is conclsive upon all tribunals enquiring into elections as to the qualification of voters inserted upon it, excepting only persons who are prohibited from voting by any statute or by the common law of Parliament. (See Parliamentory Voters Registration Act 1843 (6 & 7 Vict. c 18 s. 79) Also Halsbury's "Laws of England" Vol. 12 p. 455.)

When a person who is a candidate at an election, is found to have committed corrupt practice with regard to any person who voted at such election, one vote is, on a scrutiny, to be struck off for each such voter from the number of votes given to such candidate. (See further note 16.)

Votes may also be struck off on a scrutiny when the ballot paper on which they are recorded has not on its back the official mark or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the No. that the paper must bear printed on the back, is written or marked whereby the voter can be identified or which is unmarked or is void for authenticity. (Halsbury *supra.*)

14 **Corrupt practice.**—The whole of this sub-section is new. Clause (ii) is taken from 35 and 36 Vic., chapter 33, section 24.

Bill No. I of 1914 contained a section for insertion as sec. 21-A providing penalties for corrupt practices at elections, borrowed from the Madras Act of 1884 sec. 10, B. The Select Committee added some provisions (sec. 22-A) restricting prosecutions under the section to those initiated or sanctioned by the Judge and also that the trying Magistrate should rank not lower than one of the First Class. These provisions met with strong opposition in Council and after some discussion they were deleted, as it was stated that Government intended later on to bring out a seperate Bill dealing with corrupt practices at all elections including those to the Legislative Council, Local Boards and Municipalities with a view to secure the purity of elections.

A vote will be struck off where any person who had been, for the purposes of such election, retained or employed, for reward, as agent, clerk, messenger, or in any other employment, by such candidate or on his behalf, and is proved to have voted at such election. (See further on this point Halsbury's "Laws of England" Vol. 12 p. 457.)

15 **Personation.**—Under the English law this, to be an offence, must be committed corruptly. (See *Oldham Bor. Case.* (1864) 1 O'M & H 151,152; *Gloucester Bor. Case.* (1873) 2 O'M & H. 59, 64; *Finsbury Central Division Case* (1892) 4 O'M & H. 171; *Re Stepney Election Petition, Isaacson* v *Durrant* (1886) 17 Q. B. D. 54.)

If a person has been passing under a name which is not his real name, and is placed on the register in such name, he is not guilty of personation by voting in such name. (*R.* v *Fox* (887) 16 Cox. C. C. 166.)

A vote may be struck off on the ground of personation on the mere evidence of the person whose vote it purported to be, that he had not voted. (*Finsbury Case, supra.*)

Amending of election petition.—An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible. The petition was filed within the time limited by law. *Held* that it was competent to the court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation.

The ground on which the petition was based was not altered. The particular instances of personation could be given at any time before the suit came on What the Court had to do was to guard against the respondent being taken by surprise by the petitioner keeping back the particulars until the last moment. The practice in England was to allow particulars of the charge to be given after the petition was presented. (*Nawab Khan* v. *Muhammad Zamin*, I. L. R., 34 All. 649.)

Mens rea is an essential ingredient in personation, and an agent who honestly believes that the person whom he is instigating to vote is the person whose name is upon the register is not guilty of corrupt practice, although the person whose vote is in question may know that he is not the person whose name is upon the register. On the same principle, if a person innocently votes in the name of another and the only charge in the petition is that of personation, the vote is not struck off, since the innocent voting in another's name is a matter that is not covered by a charge of personation. (Halsbury.)

16 **Corrupt practice by agent.**—The principle that a candidate is liable, to the extent of his election being avoided, for the corrupt acts of his agent, even though he may have expressly forbidden such Acts, is one of the common law of England. It follows accordingly that in order to give in evidence the commission of such Acts by an agent, it is not necessary to prove that they were authorised or sanctioned. (See *Norwich Borough Case* (1869) 1 O'M & H. 8; *Westbury Borough Case, ibid* 47; *Staley bridge Bor. Case. ibid* 66; *Tamworth B. Case, ibid* 75) It is merely necessary to prove at some stage of the trial that the person committing them was an agent.

What constitutes agency is a question to be decided on the circumstances of each case. (See *Bewdley Bor Case*, (1869) 1 O'M. & H. 16; and cases *ibid* p. 112, 181; 2 O'M. & H. 66, 100.

As to who is an agent for election purposes see Halsbury's "Laws of England," Vol. 12 p. 269.

17 **Explanation.**—This is taken from 17 and 18 Vic., chapter 102, sec 2 (2.)

18 **Irregularities &c. do not invalidate election.**—This would not cover a case of an improper refusal to put a qualified candidate's name on the candidates' list or refusal to accept his nomination. See note 9 sec. 12; also notes to Election Rules, Appendix Part II.

English Act s. 72. "An election shall not be invalidated by non-compliance with the rules for elections or mistake in the use of the forms, if it appears to the Court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act. Nor for any defect or want of title of the election officer."

As to the liability of such officer for irregularties see note 9 sec. 12; and where it was held that an officer like a returning officer exercising *quasi* judicial functions cannot be made, personally responsible in damages for an erroneous judgment if he acts *bona fide*.

19 **Disqualification for term of years.**—In addition, the person is liable on prosecution to the penalty under section 45. This is taken from 46 and 47 Vic., chap. 51, section 5.

The order can be made only when "the Judge sets aside an election." Thus limited an unsuccessful candidate (and his agents) who has not been made a party to the election application is left unpunished. This could hardly have been intended as the next note shows. This sub-section might be amended as follows:—"If the Judge finds that a corrupt practice has been committed by any person, he may if he thinks fit, declare such person to be disqualified, &c."

"*Any Person*:—In the Bill this was "candidate." The reason for this substitution has been put as follows:—"It has been mentioned that the candidate himself though constructively guilty, may really be not morally guilty, inasmuch as the agent authorised by him may be the person really guilty. If an agent is guilty of corrupt practices, then surely that agent should not be allowed to stand for election as a Municipal Councillor, and therefore it is desirable to put "person" instead of "candidate."

This principle should have been consistently carried out by the introduction of the words "or a voter" after the word "candidate" further on. As the sub-section now stands, the disqualification would be meaningless to one who was merely a voter.

Under the Madras Act, section 10-B (3), a conviction for corrupt practice disqualified from *voting* and election for 7 years.

Under the English Municipal Elections (Corrupt and Illegal Practices) Act, 1884, (47 & 48 Vict. c. 70) where the court finds that any corrupt practice has been committed at an election, by or with the knowledge and consent of any candidate, that candidate shall not be capable of even a corporate office in the borough. If he is guilty only by his agents then he is disqualified from being elected for 3 years from the date of the finding. If the Court finds that illegal practices in reference to such election for the purpose of promoting the election of a candidate have so extensively prevailed that they may reasonably be supposed to have affected the result of such election, the candidate's election is void and he is disqualified for being elected during the period for which he might have served as councillor.

Marginal note.—The word 'candidate' should be deleted and 'person' substituted.

(5) *Presidents and Vice-Presidents.*

23. (1) Every municipality shall be presided over by a president who shall be selected from among the councillors.

' Selection of president.

(2) Every president shall be either—

President how appointed or when to be elected.

[2](*a*) appointed by the [3]Governor in Council by name; or

[4](*b*) an *ex-officio* president, that is to say, a person executing the functions of any office which the Governor in Council from time to time notifies in this behalf; or

(*c*) if the Governor in Council [5]so directs, [6]elected by the municipality.

(3) There shall be a vice-president for every municipality elected by the councillors from among their number, but, if the president is appointed by the Governor in Council or is president *ex-officio*, the result of the election shall, if the Governor in Council by [8]general or special order from time to time so directs, be subject to the approval of the Governor in Council, or of the [9]Commissioner.

[7]Election of vice-president, subject in certain cases to confirmation.

(4) When an office has been notified under clause (*b*) of sub-section (2), the person from time to time executing the functions of that office shall be and shall continue to be president, unless and until such notification is altered or rescinded by the Governor in Council.

[10]Effect of notification of *ex-officio* president.

(5) Except in the case of a salaried servant of Government who is either an appointed or an *ex-officio* president, every president, who for a period exceeding three months, and every vice-president who for a period exceeding fifteen days, shall absent himself from the municipal district in such manner as to be unable to perform his duties as such president or vice-president, shall cease to be president or vice-president unless leave so to absent himself has been granted—

[11]Consequences of absence of president or vice-president without leave.

(*a*) by the [12]Commissioner in the case of a president appointed under clause (*a*) of sub-section (2),

(*b*) by the municipality, in the case of an elected president or of a vice-president:

provided that such leave to a vice-president shall be subject to the approval

(*i*) of the Governor in Council, in the case of a vice-president elected subject to the approval of the Governor in Council, or

(*ii*) of the Commissioner, in the case of a vice-president elected subject to the approval of the Commissioner.

[13]Limit to grant of leave, and arrangements pending absence of vice-president.

(6) Leave under the last preceding sub-section shall not be granted for a period exceeding six months, and whenever leave is granted to a vice-president under that sub-section a councillor shall be elected, subject to the conditions to which the election of the vice-president so absenting himself was subject, to perform all the duties and exercise all the powers of a vice-president, during the period for which such leave is granted.

[14]Liability of president and vice-president to removal and term of office.

(7) Every president and every vice-president shall be liable from his office as such president or vice-president by the Governor in Council for [15]misconduct, [16]or neglect of or [17]incapacity to perform his duty, and the [18]term of office of every president, and of every vice-president, shall cease on the expiry of his term of office as councillor.

[19]Vacancies in their office how to be filled up.

(8) In the event of the death, [20]resignation or removal from office of a president other than an *ex-officio* president, or of a vice-president, or of his [21]becoming incapable of acting in such office or [22]having ceased to be a councillor under sub-section (2) of section 15, [23]previous to the expiry of his term of office as president or vice-president, the [24]vacancy shall be filled up by the appointment or election, as the case may be, of [25]some other councillor thereto.

1 **Origin of section.**—This is section 24 of the old Act considerably amplified.

The Madras Act is much the same as this but provides that in special cases the president need not be a councillor. Under the Panjab Act, sec. 15 (1), the president shall, unless Government excludes a municipality from the operation of this sub-section, be elected from one of the members, or the municipality may ask Government to appoint him, and the election is subject to Government approval.

The Panjab Act, section 73 says, the president (not being a salaried servant of Government), may receive a salary with the sanction of Government.

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.)

"In a recent case in which a municipality postponed taking action in a matter of vital importance to their City until a disaster was imminent, the Government of India expressed an opinion that though the municipality had a non-official president, the Collector and Commissioner should have intervened at an earlier stage, and added the following remarks to which the Governor in Council desires to call the special attention of Commissioners and Collectors:—

"In cases where a municipality has a non-official president, it is incumbent on the District Officers to afford timely guidance and assistance, more especially when, as in this case, the local body is in a difficult financial position in consequence of the City having suffered from a severe epidemic." (G. R. No. 837 of 9th February 1900.)

"Where certain defamatory statements were made regarding the subordinate officers of a municipality, *held*, that the President was not a "person aggrieved" within the meaning of section 198 of the Code of Criminal Procedure, so as to enable him to prosecute for defamation under sec. 500 of the Indian Penal Code." (*Beauchamp* v. *Moore*, 1902, I. L. R. 26, Madras 43.)

A chairman of Municipal Commissioners is not a public servant competent to issue a summons or order for the attendance of a person before him, hence such person can not be convicted under section 174 Indian Penal Code for disobedience of such an order. (*Reg* v. *Purshotam* (1868) 5 Bom. H. C. R. Crim, Ca. 33.)

In England the mayor is elected by the council from among the aldermen or councillors or persons qualified to be such. His term of office is to be for one year, and he may receive such remuneration as the council think reasonable. A person who is elected mayor and refuses to act is liable to pay a fine not exceeding £100.

A woman is not disqualified from being a mayor.

Under the Bengal Act of 1884, Govt. may remove any appointed president, but an elected one can only be removed by the vote of ⅔rd (not less) of the whole number who vote at the meeting. So also the vice-president who is always elected.

"*Selection of President*"—As to the latest expression of the policy of Government on this subject see para 3 of the G. R. 4614 noted sec. 11, and para. 7—9 of the Resolution printed with the Preface to this edition.

[illegible]inted President.—Government will appoint private gentlemen to the office [illegible]an be found possessing all the necessary qualifications. This in small as well as [illegible]lities. (G. R. No. 739 of 5th March 1884.)

As to the appointments of president to municipalities, the case of each municipality will be separately dealt with as submitted to Government.

There would appear to be no objection to the proposal that where no competent non-official gentleman can be found willing and able to perform the duties of president, the Assistant or Deputy Collector in charge of the taluka should be appointed to be president of any minor municipality in the taluka, the Collector being appointed president of the more important municipalities. (G. R. No. 1588 of 1st May 1885, Gen. Dep.)

If Government intend the president to be appointed by name, or *ex officio*, he should, in the first instance, be appointed (unless indeed in any case he happen to be a person already elected a councillor) a nominated councillor by the Commissioner. The Commissioners can always be desired to include among such nominated councillors the person whom Government intend to appoint president. (G. R. No 1422 of 10th May 1887, Gen. Dep.).

A Government officer appointed by Government to be president by name under sec. 23 (2) (*a*) and not under (*b*) does not make him *qua* president an officer of Government. As far as clause (*a*) is concerned, the Act makes no difference between officers of Government appointed presidents and other persons who may be so appointed *Gopal Janardhan Bhatkandhi* vs. *Mahadev Ramchandra Nadkani*. (Bom. H C Appeal of 14th June 1896, No. 689 of 1895.) (G. R. No. 166 of 12th January 1897, Gen. Dep.)

By section 15 of the Bombay General Clauses Act 1904 "Where, by any Bombay Act, a power to appoint any person to fill any office or execute any function is conferred, there, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act (30 May 1904), may be made either by name or by virtue of office." And by section 16 this power to appoint, unless a different intention appears, carries also the power to suspend or dismiss such person, but see note to sub-sec (7).

Magistrate appointed Chairman—*Held* that when a magistrate is appointed to the post of chairman of a municipal board and has taken over charge, he thereby becomes divested of his ordinary functions as a magistrate, or if he retains any, he is no longer a 'magistrate subordinate to the District Magistrate,' within the purview of section 528 of the Code of Criminal Procedure. (*Emperor* v. *Nathi Mal*, I. L. R., 36 All. 513.)

3 **Governor-in-Council.**—Throughout this section this means in Sind, the Commissioner in Sind. (Sec. 3 (3).)

4 **Ex-officio President.**—The old Act did not recognise *ex-officio* presidents, but such a provision has been found necessary to avoid the constant re-appointment of Collectors and their Assistants or Deputies to be presidents of municipalities, which, it is very probable, will be necessary for a long time to come, in very many small municipalities, where it is difficult to find a non-official with sufficient leisure or experience of administration for such an office.

In making these appointments the Governor in Council wishes it to be understood that the orders must not be interpreted as expressing preference for the selection of official in contra-distinction to non-official presidents. It is merely intended, in the absence of special recommendations, to continue the existing practice, and experience has shown that where the practice has been to appoint an official president, it is more convenient to make the appointment *ex-officio* than personal, in order to avoid the correspondence and frequent notification which is occasioned under the latter system, when officers are transferred from one district to

another. (G. R. No. 5341 of 18th September 1901, Gen. Dep.) These orders are modified by G. R. 4614 of 16 July 1908 (*vide* note sec. 11) and G. R. 7010 of 25 Nov. 1908 in the case of the Faizpur Municipality.

The Panjab Act, sec. 15 (3), (4), provides that an *ex-officio* councillor may be elected or appointed president or vice *by office*, in which case the person for the time being holding the office becomes *ex-officio* president or vice, but only for the term of the office of president or vice.

5 **So directs.**—This direction may apparently contain a stipulation that the election shall be subject to Government approval. Also that in the event of no selection being made within a certain period, or the councillor selected not being approved, the Governor in Council will appoint him.

The Panjab Act provides that in either of these cases, after one month from the vacancy, the Local Government may appoint one of the councillors. The Madras Act provides that this may be done by the Government on failure to elect within 2 months of receipt of the direction, or when on two successive occasions the election is not approved.

See the direction under para. 2 of G. R. 4614 of 16th July 1908, note 1, sectio[illegible]

Cases have recently come to the notice of Government in which, with [illegible] exercise of the privilege conferred on them under these orders, municipaliti[illegible]e or more elections subsequent to a first election at which none of the candidates secured the requisite majority of votes in his favour. In at least one of these cases the procedure has been attended with inconvenient results, and for this and other reasons Government consider that it is undesirable that it should be resorted to. H. E. the Governor in Council is pleased to direct, therefore, that in future, whenever an election of this nature has been held, the results should be reported to Government, whether or not they are conclusive having regard to the conditions as to a two-thirds majority. In cases where the election is inconclusive, it will be for the Government to decide who should be appointed president. Except under their express orders a second election should not be held. (G. R. 2657 of 3rd April 1914, G. D.)

The rules under the Bengal Local Self-Government Act of 1885 provide that within one month of the date in which the names of the members is published in the Official Gazette, the District Magistrate is to give notice to the members to hold a meeting on a specified date for this purpose.

6 **Elected President:**—By G. R. 4614 of 16 July 1908 this is to be made by a majority of two-thirds of the total number of councillors.

In England it is not necessary that a candidate for the office of Chairman should have a majority in his favour of the votes of the whole number of members present and voting. It is sufficient that he should have more votes than any other candidate. In an English case *Oldknow* v. *Wainright*, 1. W. Bl., 229; 2 Burr., 1017, decided in 1760 and still cited as an authority on the subject—it was held by Lord Mansfield that in an election to a corporate office, where out of 21 electors present 9 voted for the election of a particular candidate, eleven protested against his election but did not vote for any one else, and one declined to express an opinion at all, the candidate in question was duly elected.

If a municipality choose to elect the mamlatdar the Collector should not object, as it is the intention of Government that municipalities in which the privilege of selecting their own presidents is conferred should be left perfectly free to select officials or non-officials (G. R. 1519 of 19 March 1909 Gen. Dep.)

G. R. 5295 of 13th Sep. 1901 Gen. Dep. directed that no full-time servant of Government shall take office as elected president or vice-president without the sanction of the Commissioner, but this was modified by G. R. 1953 of 2 April 1908 G. D. as to vice-presidents (vide note 8.)

7 **Elected Vice-President.**—Under the old Act a vice-president's selection was obligatory only in the event of the president being a salaried servant of Government.

The confirmation in the cases stated is in accordance with the old Act and is necessary to avoid as far as possible any sudden changes in policy, when, as under section 23 (*c*), the *vice* acts for the president during his absence on leave. Under the Panjab Act the municipality may, irrespective of the president being elected or appointed, elect 1 or 2 vice presidents, one of whom to be senior. Under the Madras Act the election of a vice is optional, and must have the previous sanction of Government.

Failure to elect or to obtain approval.—The Act contains no provision for filling up the office in their events.

The Decentralisation Commission suggested that "where a vice-chairman of a municipal council is required, he should be an elected non-official."

On this point see the Government of India's resolution set out in the Preface to this edition, and also G. R. 1519 of 19th March 1909 noted above.

8 **General or special order.**—G. R. 1953 of 3rd April 1908 directs that no full-time servant of Government should take office as *elected* Vice-President without obtaining the previous approval of the Collector of the district in which the municipality is situated.

9 **Commissioner.**—The Commissioners were authorised under this section by G. R. 3046 of 27th Aug. 1884, Gen. Dep.

10 **Ex-officio president.**—Similar provision for all Bombay Acts is made by sec. 17, General Clauses Act 1904.

11 **Absence without leave.**—See note 29 sec. 15. In the Bombay Local Boards Act, 1884 (Bom. I of 1884) sec. 11 there is no such exemption in favour of "a salaried servant of Government," as it was considered undesirable there, as in the cases of municipalities, that an official, who might be shown to be absent for several consecutive months in the discharge of his official duties, should forfeit his seat.

The absence must be (1) continuous for the said period (2) from the municipal district, and (3) in such a manner as to be unable to perform his duties. These last words infer that a continuous absence exceeding the periods stated may, under certain circumstances, *not* be such as to make him unable to perform his duties. But not only is this rather vague, but who is to decide the circumstances if an officer disputes them? Even if the words "becoming incapable of acting in such office" in sub-section (8) apply to absence without leave, they only provide for the filling of the vacancy; the question whether the vacancy has occurred, has however first to be decided. Either these words should be omitted or some such provision made as in section 15 (3).

Leave to vice-presidents:—An *ex officio* councillor, who was an elected Vice-President, was transferred temporarily to another district for 6 months. The municipality wishing to retain his services gave him 6 months' leave under this sub-section. The question arose whether this was legal, and whether the transfer did not cause the officer to be no longer a councillor and therefore no longer Vice-President. G. R. No. 3922 of 16th July 1902, sets out the following opinion of the Legal Remembrancer:—

"2. The point is no doubt open to argument, in so far as Dr Cardoz by his absence ceased to execute the functions of an office notified under section 10 (1) (*b*) (*ii*) of the Bombay District Municipal Act, 1901, and therefore *ipso facto* ceased to be a nominated councillor of the municipality, his place being taken by his successor. But it does not follow that the municipality were acting illegally in utilising the provisions of section 26 (6) in such a case, so as to tide over the anticipated period of Dr. Cardoz's absence and enable him to resume his office of vice-president on his return. Section 23 (3) no doubt requires that the Vice-President should be elected by the councillors from among their number,' but it does not enact that *a vice-President so elected must cease to be Vice-President on his ceasing to be a Councillor*. Sub-section (8) of the section enumerates the cases in which a vacancy in the office of vice-president occurs, which has to be filled up by the election of some other councillor. These are:—(*a*) his *death*, (*b*) his *resignation*, (c) his *removal from office*, *i. e.*, under section 23 (7), (*d*) his *becoming incapable of acting in such office*, *i. e.*, (*i*) his absenting himself from the municipal district in such manner as to be unable to perform his duties as vice-president without leave under section 23 (5) and (6), or (*ii*) being physically or mentally incapable of performing the duties of his office, and (*e*) his *having ceased to be a Councillor under sub-section* (2) *of section* 15.

"Of these heads (*a*), (*b*), (*c*) and (*e*) obviously do not apply to this case, nor does (*d*) (*ii*). The only head of those enumerated under which Dr. Cardoz's case can possibly fall is therefore (*d*) (*i*), but that itself provides for the grant of leave under specified conditions, which has been granted by the municipality. Accordingly, in my opinion, section 23 (8) does not render the action of the municipality illegal.

"3. Nor in my opinion does the provision in section 23 (7) that 'the term of office of every vice-president shall cease on the expiry of his term of office as councillor' mean that his ceasing to be a councillor under section 10 (1) (*ii*), *ipso facto*, vacates his office as vice-president. The expression 'term of office' as defined in section 17 relates to the period of three years, extensible by the Commissioner's order to four years, for which nominated or elected councillors can hold office at one time, and has no reference to the provisions of section 10 (1) (*ii*). Accordingly Dr. Cardoz's 'term of office as *councillor*' did not expire within the meaning of section 23 (7) on his ceasing to be a councillor by virtue of the provisions of section 10 (1) (*ii*), but would only expire at the same time as that of the other councillors under section 17.

"4. I think therefore there is nothing in the Act to prevent the municipality legally availing themselves, as they did, of the provisions of section 23 (6) in Dr. Cardoz's case; and this 'beneficial construction' of the Act is supported by the remarks in paragraph 23 of the

Select Committee's Report on the Bill (at page 4 of the *Bombay Government Gazette* for 1901, Part V), which do not differentiate in any way between the different classes of councillors who may be presidents or vice-presidents."

It is submitted that this argument is not sound. Dr. C. having ceased to execute the functions of his office as an *ex officio* councillor ceased to be a councillor *ipso facto*, and no grant of leave could make him continue to be such. Leave can only affect one who is a councillor; not if he has ceased to be one. It is also incorrect to limit the application of the words "becoming incapable of acting in such office" to absence without leave; it applies equally to a councillor who ceases to be one because he has relinquished the office by virtue of which alone he was "capable of acting in such office."

As to the argument referring to the words "term of office" in sub-sec. (7) see note 18. It appears to have been entirely over looked that sec. 23 (8) clearly contemplates a vacancy occurring in the "office of a president or vice-president" on his "having ceased to be a councillor under sec. 15 (2)."

12 **Commissioner.**—This has been substituted for "Governor in Council" by Bombay Act III of 1915.

13 **Limit of leave.**—No need for the election or appointment of acting president, as *vice* acts. sec. 25 (c).

In such a case the office of *vice* remains vacant so long as he acts for the president, as provision for an acting *vice* is made only in the event of himself going on leave.

Under the Bengal Act of 1884 the leave is not to exceed 3 months and even then it causes a vacancy which is to be filled up by "another person" elected or appointed during the absence on leave.

14 **Removal.**—Compare with section 16. This is a re-enactment of para. 3 of section 24 of the old Act put in another form.

By section 16 (2) of the Panjab Act "any president or vice-president may be removed from office by the Local Government in pursuance of a resolution to that effect passed by ⅔rds of the members present at a special meeting"

The order for removal will be from office as President &c. It does not necessarily involve removal from the office of councillor. If the "misconduct &c" is such as to justify an order under sec. 18, this should be clearly stated. In that case it will not be necessary to make an order under this sub-section also. It should be noted that an order under section 18 may be a permanent disqualification, but one under this sub-section does not carry the same penalty. It however penalises him to the extent that he cannot be appointed or elected to fill the vacancy. If the office again became vacant before the expiry of the full term, would he still not be qualified to fill it?

As to evidence necessary to justify order, see note 6, section 16.

15 **"Misconduct"**—See note 7, section 16. Here though the words "in the discharge of duties" are omitted, still it would seem that the misconduct must be as "president." If the 'misconduct' ('disgraceful conduct') is as an individual, the order could be made under sec. 16.

16 **"Neglect of duty."**—Under the Madras Act, if a Chairman, without an excuse sufficient in the opinion of the Governor in Council, omits or refuses to carry out any resolution of the council, he may be removed.

17 **"Incapacity to perform duty."**—See note 9, section 16.

18 **Term of office.**—The obvious meaning of the words "term of office of every president &c. shall cease on the expiry of his term of office as councillor" is that when a person ceases to be a councillor he ceases to be a president. He may not cease to be a councillor till the expiry of the full term referred to in sec. 17, but he may cease at any time before for any of the reasons given in the Act; whenever he ceases his office as president also ceases. The words are not "the term of office of every president shall be for the full term for which he has been appointed or elected a councillor," nor can they bear any such meaning. The very form in which the words are put "shall cease," not "shall continue," shows that it aims at negativing any idea that because he has become president etc he must necessarily remain in office the full term of the council. It says in so many words that the life of the president is bound up in his life as councillor, whenever the latter ceases the former must. Sec. 17 itself by use of the expression "save as provided in the next following section unless disabled" points out that the term of office of a councillor has a maximum of 3 or perhaps 4 years but may cease at any time when a casual vacancy occurs; and sec. 23 (8) puts this beyond all doubt as it clearly contemplates a vacancy occuring on his "having ceased to be a councillor under section 15 (2)" It is significant that sub-sec. (8) after saying that the

vacancy shall be filled by "some other councillor thereto" does not go on to provide, as sec. 18 does, as to how long such succeeding councillor (president) is to hold office. Why? Because sub-sec. (7) has already made it clear that the term is only so long as he continues to be a councillor. See note 11 as to G. R. 3922.

19 **Vacancies how filled.**—This is a reproduction of the last clause of sec. 24 of the old Act, with some slight alterations.

The remarks note 1, sec. 18, apply here *mutatis mutandis*. Here too the meaning of the section would be simpler and quite as effective if it ran, "In the event of any vacancy in the office of president other than an *ex officio* president or of a vice-president, it shall be filled up, &c., &c."

Here too the object of the sub-section is not to state in what cases vacancies occur, but, as the marginal note also indicates, how they are to be filled. The enumeration of cases of vacancy is quite unnecessary, and moreover it is defective, if it was intended to give a complete list of such cases, for it not only does not provide for vacancies due to failure to elect or failure to obtain approval of Government in cases where such approval is necessary in the office of vice-president (vide note 5 above), but it omits other cases where a vacancy must occur owing to his "having ceased to be a councillor" such as a councillor resigning or being removed (sec. 16) *only as councillor*. The result of the enumeration is to make no provision for how the vacancies in these other cases is to be filled, until he is disabled under sec. 15 (2) (e) after the elapse of 4 months, or an order for removal is made under sub-sec. (7).

20 **Resignation.**—See notes sec. 15-A. This is of his office of president or vice-president only.

21 **"Becoming incapable of acting in such office."**—Apart from the argument note 1, these words are here unnecessary for if becoming such, he does not resign, he can be removed under sub-sec. (7). See note 11 as to G. R. 3922.

23 **"Previous to the expiry * * * vice-president."**—These words are redendant. See note 5 sec. 18.

24 **Vacancy shall be filled up.**—See note 6, sec. 18. The only difficulty under this sub-section arises in the case referred to in note 7.

25 **Some other Councillor.**—Compare with sec. 18 and see note 32, sec. 15 and note 18 above.

In the case of office bearers like the president or vice the law makes it clear that on the vacancy occuring the same person is not to be appointed or elected. This is doubtless necessary in such cases, whereas it is not in the case of one who is only a councillor, and who if he is an elected one, has again to pass the ordeal of an election by the constituency. If subsequently the office again became vacant would such person be still disqualified? It would appear not, for he would then be "some other councillor." Besides if the legislature intended the disqualification to last the whole term of the council it would presumably have stated so.

Under the Bengal Act of 1884 in the case of councillors as well as office bearers the vacancy is to be filled up by another person.

Municipal government vests in the municipality.

23-A. (1) Except as in this Act otherwise expressly provided, the municipal government of a municipal district vests in the municipality.

(2) In a municipal district for which there is a Municipal Commissioner the executive power for the purpose of carrying out the provisions of this Act rests in the Municipal Commissioner subject, whenever it is in this Act expressly so directed, to the approval or sanction of the municipality and subject also to all other restrictions, limitations and conditions imposed by this Act.

Origin of section.—This section was inserted by the Select Committee and embodied in sec. 7 of the Amending Act of 1914, "in order to safe guard the powers of general control and supervision of the municipality."

Sub-sec. (1) is taken from sec. 64 (1) of the Bom. City Act 1888.

The words "except as in this Act otherwise expressly provided" refer to such sections as 174, 175 and 179 and do not affect the right of a municipality to its own government except in these instances.

[1]Functions of presidents.

24 (1) It shall be the duty of the president of a municipalty to

[2](*a*) preside, unless prevented by reasonable cause, at all meetings of the municipality, and subject to the provisions of the rules for the time being in force under clause (*a*) of section 46 to regulate the conduct of business at such meetings;

[3](*b*) watch over the financial and executive administration of the municipality, and, subject to the rules of the municipality at the time being in force, to perform such [4]executive functions as may be performed by or on behalf of the municipality over which he presides;

[5](*c*) exercise supervision and control over the acts and proceedings of all officers and servants of the municipality in matters of executive administration and in matters concerning the accounts and records of the municipality; and, subject to the rules of the municipality at the time being in force, to dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances;

(*d*) furnish to the Collector, or to such other officer as the Collector shall from time to time nominate in this behalf, a copy of every resolution passed at any meeting of the municipality and any extract from the minutes of the proceedings of the municipality or of any committee or other document or thing which the Collector from time to time calls for under section 173.

[6]Functions of Municipal Commissioner.

Provided that in a municipal district for which there is a Municipal Commissioner, the duties and powers of the president under clauses (*b*), (*c*) and (*d*) of this sub-section shall, subject to the provisions of this Act and save where it is otherwise expressly provided in this Act, be performed and exercised by such Municipal Commissioner.

[7]President in what cases to have only a casting vote.

(2) When the president of a municipality is a salaried servant of Government, and is either an *ex-officio* president or has been appointed to be president by the Governor in Council, he shall not vote upon any questions which come before such municipality for decision unless there is an equality of votes of the other councillors present for and against the proposition under consideration, in which case he shall have a casting vote.

1 **Functions of president.**—This is section 25 of Bom. Act II of 1884, very slightly altered.

The Panjab Act, section 26, and Madras Act, section 32-A, gives the president and in his absence the *vice*, power to direct execution of any work, &c., in emergency, under certain limitations.

The president has no power to override a resolution of a Managing Committee which can be overruled only by a resolution passed by the municipality at a quarterly or special general meeting. (G. R. 22 of 4th January 1887, Gen. Dep.)

By a repealed section of the old Act of 1873, the president had an original vote as well as a casting vote. He moreover had the power, in the case of City Municipalities, of suspending the operation of any resolution which might be carried against a minority of the councillors, being not less than $\frac{2}{3}$ths of those who may have voted on the motion.

In the case of town municipalities the entire power or responsibility for carrying out the purposes of the Act were vested in the president finally, and in the vice-president subject to appeal to the president. And the president or vice-president could overrule any decision of the councillors on recording his reasons for so doing.

For other duties of presidents see section 26 (1), (2).

Collector to be medium of correspondence.—Where non-official gentlemen have been appointed by Government or elected presidents of municipalities, the Collector should always be the medium of communication between such Presidents and the Commissioners or Government (G. R 2546 of 9th July 1885, Gen. Dep.)

Postage stamps—Service or Private, when to be used:—A Collector or Educational Inspector, in any case in which he acts in his capacity of Collector or Educational Inspector, and subscribes himself as such, will use service postage stamps. But in any case in which he acts as President or a member of a Committee, he will use private postage stamps.

No practical difficulty need be felt in deciding in what instances service postage and ordinary postage labels should be used by public servants in their *ex-officio* capacity of Local Fund officers. (G. R. 3886 of 11th Oct. 1882, Fin. Dep.)

Inspecting officers paid out of Provincial Revenue are entitled to use service covers in matters connected with Local Funds, whilst officers maintained entirely out of Local Funds can not. (G. R. 1410 of 23rd April 1880, Fin. Dep.)

A Mamlatdar conducting Local Funds correspondence in the capacity and under the signature of "Mamlatdar" (*i.e.* as administrative head of the taluka and not as a Local Fund official) is entitled to use service stamps. (G. R. 4413 of 18th Nov. 1882.)

So also in his capacity of Treasury officer. (G. R. 1097 of 17 March 1883, Fin. Dep.)

Also an Executive Engineer carrying out Local Funds works as Executive Engineer. (G. R. No 676 of 21st Feb. 1881.)

But the Deputy Collector in charge of Local Funds Accounts and corresponding as such on behalf of the President, Local Fund Committee, must use non-service stamps. (G. R. No. 3338 of 1st Sep. 1882.)

Also the Commissioner of a division writing *in that capacity* to a Local Fund officer concerning Local Fund affairs, may superscribe the letter "on His Majesty's Service."

The term Local Fund is intended to include municipalities and other similar bodies or institutions. (G. of I. No. 3995 of 22nd Nov. 1879; G. R. 4361 of 9 Dec. 1879; 209 of 18 January 1886, Gen. Dep.)

The correspondence of the Vaccination Department is subject to these rules. (G. R. No. 2349 of 5th July 1880.)

An *ex-officio* president or vice-president of a Local Fund or Municipal Committee must use non-official labels for correspondence connected with the affairs of these bodies. (G. R. 1368 of 20th April 1880.)

"The following officers are, by G. R., Fin. Dep., No. 2333, dated 28th June 1882, allowed the advances mentioned against each, to meet charges on account of postage on Local Funds and municipal correspondence—

The Collectors and Deputy Commissioners	Rs. 10
All Deputy Collectors, including Deputy Collectors in charge of Treasuries and the Huzur Deputy Collector, Karachi	„ 5
All Executive Engineers	„ 5
Mukhtiarkars	„ 3

Postage Stamps.—Use of—with letters printed upon them, by all Local Funds and District Boards to be discontinued, but the use of a distinctive mark on these stamps if made by means of minute perforations allowed. (G. R. No. 2563, dated 8th Aug. 1894.)

Local Funds and municipalities are to make their own arrangements for perforating stamps, if thought necessary. (G. R., Fin. Dep., No. 4090, dated 12th Dec. 1894.)

Copies of Government Resolutions to be supplied.—As a rule, copies of all Resolutions of Government regarding any municipality should be sent to the president for record in his official capacity as president. These Government Resolutions come through the Collector, who in special cases, when he sees good ground, should send only extracts from any particular Government Resolution. (G R No. 1372 of 15th April 1886, Gen. Dep.)

2 **Duties of Chairman of meeting:**—The most important duty of the Chairman of a meeting is to maintain order, or, in other words, to see that the proceedings and discussions are regularly and properly conducted. He must take care that there is a distinct motion before the meetings, and should allow no speeches to be made which are not strictly relevant to that motion. His decision on all points of order is virtually final. The duty of deciding all questions as to the admissibility of motions and amendments under the rules in force as to notice, or in regard to the terms of the notice convening the meeting in question is especially imposed upon him. He should insist upon the use of decorous and temperate language, and call any person to order who indulges in unwarrantable personalities or imputations. Where two members rise at the same time it is for the Chairman to decide which is entitled to speak. When a motion or amendment is made, and the mover resumes his seat, the Chairman should allow no member to speak unless such member declares that he rises to second the motion or amendment. The Chairman is entitled to insist that all speeches should be addressed to him, and that members should not speak on the same motion more often than the rules permit. The general rule is, that, except in the case of a mover summing up by way of reply, no speaker is entitled to speak twice. "Perhaps it will be safe in a general way to allow a man to speak a second time, if he does so in good faith, for the purpose of commenting on some new point that has arisen since his first speech, or of making some new suggestion of his own, it being clearly understood both by him and by the meeting that he speaks by favour, and not of right". (Chamber's Hand book for Public Meetings p. 25.)

When business involving many details has to be transacted, it is better that the meeting should resolve itself into a committee, thereby suspending the ordinary rules of debate, and permitting a general discussion unfettered by them.

According to the procedure usually followed in England, only one amendment can be before the meeting at the same time, that is to say, that the Chairman must not accept a second amendment until the first has either been negatived or accepted as the main question. In this country however, a different practice prevails and several amendments are commonly before a meeting at the same time, the last one made being put to the vote first. It must be remembered that an amendment, as its name implies, professes to improve by alteration the original motion, an amendment cannot merely negative the original motion. "A person objecting to a motion *in toto* must be content to vote 'No' when the question is put from the Chair." When once a motion or amendment has been duly made and seconded, it becomes the property of the meeting, and cannot be withdrawn unless the meeting consents.

For full information as to the powers and duties of Chairman in regard to meetings, reference may be made to Palgrave's Chairman's Handbook and Chamber's Handbook for Public Meetings.

3 **Financial control.**—The financial control being in the hands of the president, there is nothing in the Acts to show that any Committee or Chairman is to exercise any control over the funds of the municipality or to recover or disburse money.

Apart from the inconvenience of always having to await the Committee's or Chairman's arrival, it would obviously lead to inconvenience and possibly to friction, since the president is to exercise supervision and control over the financial administration and matters of accounts, if disbursements were made by delegates of the municipality independent of his control.

The president is directly responsible to Government, being removeable under section 23 by Government, and is bound to watch over the financial administration.

Having sole control, he can, under section 25 (*b*) make a division of labour by deputing some of his power to the vice-president which would not be possible under other circumstances. (G. R. 734 of 14th February 1890, Gen. Dep.)

Inspection and signing of registers.—It has also been pointed out that with regard to Municipal Accounts presidents and vice-presidents should be impressed with the extreme importance of strict and regular compliance with the rules in the matter of the inspection and

signing of the various registers, such as day-book, ledger, and dead-stock register. This obligation is directly and specifically imposed by law and any neglect cannot be regarded otherwise than a serious dereliction of duty.

Cheques by whom to be signed—As the law stands, the proper person to sign municipal cheques is the President of the municipality: or the vice-president, if duly empowered to do so under section 26 (*b*) of Bombay Act II of 1884.

"Unlike the Bombay City Act, section 113, the District Act of 1884 is silent as to the manner in which disbursements are to be made and cheques drawn for the same. The only presumption to be drawn is, that the president, in whose hands the financial control is placed, is the proper person to draw the cheques either directly, or under section 26, (now 25) through the vice-president.

"The president's power to delegate the authority for signing cheques seems to be restricted by section 26 (now 25) to the vice-president alone.

"The municipality has not power to frame under section 32 (*a*) (now 48 (*a*)) 'for regulating the conduct of business,' rules empowering other persons to sign cheques.

"The expression 'conduct of business' has a peculiar signification under the District Municipal Act of 1884. The same is denoted by sections 27 to 31 which are headed 'conduct of business' and which contain directions with respect to the proceedings of municipal meetings and committees. Out of these, the only section which touches on another subject is section 30, and that is 'the mode of executing contracts.'

"This special meaning of 'conduct of business' is also confirmed by the subsequent words of section 32 (*a*), *viz*, 'and the delegation of its powers or duties to one or more committees.'" (G. R. 2432 of 5th May 1907, Gen. Dep.)

G. R. 545 of 28th January 1898 required all municipalities to conform to the above rule.

4 **Executive functions.**—Under the old Act, the president could perform only "such executive functions as he may be empowered to perform by the rules." Now he may perform all such functions unless rules are passed limiting his powers; he has a free hand in all cases where no special restrictions have been put upon him.

Section 46 (6) provides that the municipality shall make rules determining the executive functions of the president.

G. R. 3924 of 30th July 1909, G. D. on a review of the annual report by the Accountant General on the working of the Local Audit Department for 1908-09 says "The irregularities brought to notice in continuation of those discovered in 1907-08 show that the provision of trustworthy and capable executive officers is the first requisite of efficient local administration. Administrative bodies composed of a large number of members cannot themselves or even by their committees (sic) discharge executive duties satisfactorily.'

5 **Control of officers and servants.**—Under the Madras Act, sec. 42 (3), the Chairman may, subject to such control as Government may prescribe, fine, reduce, dismiss or appoint any servant.

Granting leave.—The rules are to be made under sec. 46 (*e*), (*f*) and (*g*):—The municipality may keep the power of granting leave in their own hands, or may limit the power of the president to do so.

G. R. No. 1161 of 31st March 1894, Gen. Dep. lays down that there is nothing in the Act inconsistent with the retention by the municipality of that ordinary power to grant leave, which an employer as such, can exercise as a matter of course. It may be undesirable to limit a president's power to petty cases of under Rs. 10 per mensem, but the mere omission in the Act of *express* power to grant leave, does not deprive the municipality of that power, any more than that the omission of *express* power to *dismiss* deprives them of that power.

Appointment, punishment, dismissal.—This is in the hands of the president subject to rules made under sec. 46 (*b*) (*ii*) determining what staff is to be employed (the appointment being with the president) (*c*) the mode and conditions under which they are to be appointed, punished or dismissed by the president.

"2. Section 25 (*c*) of the Bombay District Municipal Act 1884, follows almost verbatim the wording of section 28 (*c*) of the Local Boards Act, and the only difference is that under the former the president is subject to rules, under the latter to regulations.

"7. The Bombay District Municipal Acts on the other hand in no way restrict the power of *dismissing* purely municipal officers and servants, the proviso to section 32 (*i*) relating only to servants lent or shared by Government.

"8. And as an employer, unless placed under special restrictions, has generally the power of *dismissing* his employes, no express *power* to *dismiss* was deemed necessary in the case of municipalities whose discretion had not, like that of Local Boards, been placed under *general* restrictions.

"9. The power to regulate the grant of leave in the case of Local Boards extends only to *permanent* officers and servants leaving wholly uncontrolled the discretion of the president as to all others. While under section 32 (*d*) of Bombay II of 1884 the regulation by the municipality extends to all officers and servants.

"10. And in section 32 (*b*) of Bombay II of 1884, officers and servants are spoken of as 'employed by' the municipality, while the expression in section 39 (*a*) and (*b*) of Bombay I of 1884 is 'maintained by' the Board.

"11. The inference may perhaps be drawn from these distinctions and from the different character of the bodies and their respective staffs, that Local Boards were intended to exercise only such control over their staff as was *expressly* vested in them, while municipalities were intended without special mention to have the general powers of employers, which would, unless expressly excluded, include power of dismissal and power to grant leave." (G. R. 1161 of 31 March 1894 Gen. Dep.)

6 **Municipal Commissioner**.—This was inserted by s. 8 of the Amending Act of 1914. See section 64 (3) of the Bombay City Act as to "special functions of the Commissioner."

The Select Committee say:—In order to avoid the evils of dual control and conflict of authority it was decided after discussion to provide for the transfer of the executive and administrative functions of the President to the Municipal Commissioner. It was objected that to deprive the President of all these powers was to reduce him to a figure head and that it was necessary to have some such authority as the President to supervise the action of the Municipal Commissioner. Against this it was said that the fact that the Municipal Commissioner could only act within the budget allowance, vested full financial control with the President.

The powers of the Municipal Commissioner have been set forth in detail in Chapter XIII-A with several important safe guards.

7 **President's vote**.—It is perfectly clear from sec. 27, clauses (9) and (13) [now sec. 26 (10)] that except in the case here specified, the president has a vote, as well as a second vote in case of equality. (G. R. 558 of 17th Feb. 1885, Gen. Dep.) As to casting vote see sec. 26 (10).

Shall not vote.—The vote referred to here can be held to refer only to the subsequent record of the votes of members of a Board on a proposition brought forward and seconded by members, one of whom may have been an official president, (G. R. 4619 of 29th June 1886, Rev. Dep.) See also note 2 to sec. 35.

Functions of vice-presidents.[1]

25. It shall be the duty of the vice-president of a municipality

(*a*) in the absence of the president and unless prevented by reasonable cause, to preside at the meetings of the municipality, and he shall, when so presiding, exercise the same authority as is vested in the president under [2]clause *(a)* of sub-section (1) of section 24,

(*b*) to exercise such of the powers and perform such of the duties of the president as the president from time to time deputes to him; and

(*c*) pending the succession, appointment, or election of a president, or during the absence of a president on leave, to exercise the powers and perform the duties of the president.

1 **Functions of vice-president**.—Clauses (*a*) and (*b*) are section 26, Bom. II of 1884, re-enacted with some slight alterations.

When there is an official (*i.e.*, a salaried servant of Government,) appointed president, he should leave the duty of presiding at meetings as far as possible to the elected vice-president. (G. R. 2833 of 7th May 1887, Rev. Dep.)

In the absence of the vice, the meeting may choose a chairman for the occasion. (sec. 26 (5)).

2 **Clause (a).**—This was inserted here by sec. 1 of the Amending Act of 1904.

CHAPTER III.—CONDUCT OF BUSINESS.*

(1) Municipal meetings.

26. The following provisions shall be observed with respect to the meetings of a municipality;—

Provisions in regard to meetings of a municipality.

(1) Except in periodical municipalities and in municipalties at hill stations, there shall be held four ordinary general meetings in each year for the disposal of general business, on or about the tenth day of the months of January, April, July and October, respectively, and such other ordinary general meetings as the president may find necessary. In municipalities at hill stations there shall be held one ordinary general meeting on or about the tenth day of April, and not less than one other ordinary general meeting for the purpose aforesaid, in each year. In every periodical municipality there shall be such and so many ordinary general meetings, as the president thereof shall from time to time determine. It shall be the duty of the president to fix the dates for all ordinary general meetings.

Ordinary general meetings.

(2) The president may, whenever he thinks fit, and shall, upon the written request of not less than one-fourth of the councillors, call a special general meeting.

[1]Special general meetings.

(3) Seven clear days' notice of an ordinary general meeting, and three clear days' notice of a special general meeting, specifying the time and place at which such [4]meeting is to be held and the business to be transacted thereat, shall be circulated to the councillors, and [5]posted up at the municipal office or the local kacheri or some other public building in the municipal district. The said notice shall include any motion or proposition which a councillor shall have given written notice not less than ten days previous to the meeting of his intention to bring forward thereat, and, in the case of a special general meeting, any motion or proposition mentioned in any written request made for such meeting.

[2]Notice to be given of meetings.

(4) Every meeting of a municipality shall, except for reasons to be specified in the notice convening the meeting, be held in the building used as a municipal office by such municipality.

Municipal meeting to be held at municipal office.

(5) Every meeting shall, in the absence of both the president and vice-president, be presided over by such one of the councillors present as may be chosen by the meeting to be chairman for the occasion, and such chairman shall exercise thereat the powers vested in the president by clause (*a*) of sub-section (1) of section 24.

[6]Every meeting how presided over in the absence of the president and the vice-president.

(6) Every meeting shall be open to the public unless the presiding authority deems any inquiry or deliberation pending before the municipality such as should be held in private, and provided that the said authority may at any time cause any person to be removed who interrupts the proceedings.

[7]Meeting must ordinarily be open to the public.

(7) If in a City municipality less than one-third, and in any other municipality less than one-half of the [13]whole number of councillors be present at a meeting at any time [9]from the beginning to the end thereof, [10]the presiding authority shall adjourn the meeting to such hour on the following or some other future day as he may reasonably fix, and a notice of such adjournment shall be fixed up in the municipal office, and the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting [11]or at any subsequent adjournment thereof whether there be a quorum present or not.

[8]Number of councillors required to form a quorum.

(8) Except with the permission of the presiding authority, which permission shall not be given in the case of a motion or proposition to modify or cancel any resolution within three months after the passing thereof, no business shall be transacted and no proposition shall be discussed at any general meeting unless it has been mentioned in the notice convening such meeting, or, in the case of a special general meeting, in the written request for such meeting. The order in which any business that may be transacted or any proposition that may be discussed at any meeting in accordance with this sub-section, shall be brought forward at such meeting, shall be determined by the presiding authority, who in case it is proposed by any member to give priority to any particular item of such business, or to any particular proposition,

[12]What business to be transacted at meetings and order of business how to be settled.

shall put the proposal to the meeting and be guided by the majority of votes given for or against the proposal.

(9) In every City municipality there shall be kept in English, and, if the municipality so resolve, in the vernacular language also, and in every other municipality there shall be kept in the vernacular language, and if the municipality so resolve in English, either in lieu of or in addition to the vernacular, minutes of the names of the councillors and of the Government officers, if any, present under the provisions of sub-section (14), and of the proceedings at each general meeting, in a book to be provided for this purpose, which shall be signed, as soon as practicable, by the presiding authority of such meeting, and shall at all reasonable times be open to [14]inspection by any inhabitant of the municipal district.

[13]Minutes of proceedings to be kept.

(10) All questions shall be decided by a majority of votes of the councillors present and voting, the presiding authority, save as provided in sub-section (2) of section 24, having a [15]second or casting vote in all cases of equality of votes. [16]Votes shall be taken and results recorded in such manner as may be prescribed by rules in that behalf for the time being in force under clause (*a*) of section 46.

All questions to be decided by a majority of votes.

(11) Any general meeting may, with the consent of a majority of the councillors present, be adjourned from time to time; but no business shall be transacted at any adjourned meeting other than that left undisposed of at the meeting from which the adjournment took place.

[17]Adjournments of meetings.

(12) No resolution of a municipality shall be modified or cancelled within three months after the passing thereof, except by a resolution supported by not less than one-half of the whole number of councillors, and passed at a general meeting whereof notice shall have been given, fulfilling the requirements of sub-section (3) and setting forth fully the resolution which it is proposed to modify or cancel at such meeting, and the motion or proposition for the modification or cancellation of such resolution.

[18]Modification and cancellation of resolutions.

(13) Except for reasons which the presiding authority deems emergent, no business relating to any work which is being executed for the municipality by a Government Executive Engineer, or to [20]any educational matter, shall be transacted at any meeting of a municipality unless, at least fifteen days previous to such meeting, a letter has been addressed to the said Executive Engineer or to the Educational Inspector of

[19]Notice of certain business to be given to the Government Executive Engineer or Educational Inspector.

the district, informing him of the intention to transact such business thereat, and of the motions or propositions to be brought forward concerning such business.

Certain Government officers may attend meetings of municipalities.

(14) (*a*) The members of the Sanitary Board, and Executive Engineer, Educational Inspector and Deputy Sanitary Commissioner of a district, and the Civil Surgeon in a district when charged with any of the duties of a Health Officer therein, if not members of a municipality within the district, shall have the right of being present at any meeting of such municipality, and, with the [22]consent of the municipality, each of them may take part at such meeting in the discussion or consideration of any question, on which, in virtue of the duties of his office, he considers his opinion or the information which he can supply will be useful to such municipality :

[23]provided that the said officers shall not, unless they are members of the municipality, be entitled to vote upon any such questions.

Municipalities may require the presence of certain of the said officers at their meetings.

(*b*) If it shall appear to a municipality that the presence of the Executive Engineer, Educational Inspector, Deputy Sanitary Commissioner or Civil Surgeon of or in the district, is desirable for the purpose aforesaid at any future meeting of such municipality, it shall be competent to such municipality, by letter addressed to such officer not less than fifteen days previous to the intended meeting, to require his presence thereat ; and the said officer, unless prevented by sickness, or other reasonable cause, shall be bound to attend such meeting :

provided that such officer on receipt of such letter may, if unable to be present himself, instruct a Deputy or Assistant or other competent subordinate as to his views, and may send him to the meeting as his representative, instead of appearing thereat in person.

***Conduct of business.**—These regulations are founded upon repealed sections of the old Act, with such alterations and additions as appeared desirable in order to present a simple and intelligible basis for the construction of systems suitable to the requirements of either large or small municipalities constituted under this new law. Subject to these regulations each municipality will be left free to frame its own rules for the conduct of business.

See the published volume of "Orr's Model Rules and By-laws," which are very elaborate and useful.

For full information as to the duties and powers of a chairman in regard to meetings, reference may be made to *Palgrave's Chairman's Hand-book* and *Chamber's Hand-book for Public Meetings*.

1 **Special General Meetings.**—*When call obligatory.*—

"Clause 2 of section 27 of Bom. Act II of 1884 leaves a president no discretion as to calling a special general meeting, when he receives a written request of not less than one-

fourth of the councillors to do so. The word 'shall' is imperative. In the corresponding case, the English Act, provides that if a mayor refuses or neglects within 7 days after presentation of the requisition to call a meeting, any five members of the Council may do so. The Bombay Legislature probably thought that such a provision as this would be unnecessary in this Presidency, when the language of section 27 (2) of Bom. Act II of 1884 so clearly indicates that it is intended to invest councillors exceeding in number one-fourth of the whole with a right to require a general meeting to be called and the president is directed to give effect to every such requisition." (G. R. 1924 of 3rd June 1891, Gen. Dep.)

Under the Panjab Act, section 19 (2), the C. P. Act, section 12 (2) and the N.-W. P Act, section 27 (2), the requisition must be by 'not less than $\frac{1}{5}$th.' The Madras Act requires at least $\frac{1}{4}$th, and under section 29 the requisition must be made at least 6 days previous to the meeting, and no meeting, except in cases of urgency, can be held unless 3 clear days' notice is given.

Date to be fixed by President.—On the question being raised whether the councillor could insist on a particular date for the special meeting, the Legal Remembrancer says:—

"2. It appears that the President upon whom is laid the duty of calling the special general meeting is the proper authority to fix the date of such a meeting under section 26 (2).

"3. It appears that the only express limitation on his power to fix the date is that he must give three clear days' notice under section 26 (3). But he would probably be held to be also impliedly bound to call the meeting within a reasonable time according to the circumstances of the case. This is the general rule where the time for performing a duty is not specified.

"4. It does not appear that any power has been conferred on the councillors to fix the date of a special meeting by the Act." (G. R. 2980 of 10th May 1907, G. D.)

Meeting not called by President not legal.—A dispensation of liability under contract cannot be effected by a mere resolution.

In order that a meeting of the Special General Committee of a District Municipality should be properly constituted, it must be called by the president under section 27 (2) of Act of 1884. If not so called, the defect is not cured by section 27 (17). (Now sec. 38.) Assuming however that that was a legal resolution, in as much as under section 63 of the Contract Act there can be dispensation or remission only by means of a promise, that is an agreement or contract, the resolution was of no legal effect since the provision of sec. 30, which requires that such an agreement should be executed in a particular manner in writing and under seal, had not been observed.

Contract, not sealed, but for executed consideration, is good.—Though a contract by a Corporation must ordinarily be made under seal, still, where there is that which is known as an executed consideration, an action will lie though this formality has not been observed. (*Abaji Sitaram Modak* v. *The Trimbak Municipality*, (I. L. R. (1903) 28th Bom. 66.)

Note.—The latter part of this ruling was dissented from in I. L. R. 27-A, 592 and 29 M. 360 noted sec. 40.

2 **Notice of meetings.**—Under the English Act the notice of the meeting, signed by the mayor, or if the meeting (special) is called by the councillors, by those members, specifying the time and place, and in case of a special meeting also of the business to be transacted, shall be fixed on the town hall. A *separate summons* to attend the meeting stating the business to be transacted is to be signed by the town clerk and served on every member of the council.

Held, that a resolution imposing a tax was not invalid, although the notice convening the meeting at which such resolution was passed, did not specify the object of the meeting. (*The Surat City Municipality* vs. *Ochhavram Jamnadas*, I. L. R. 21, Bom. 630).

Signed by the President or Secretary.—Provision for this should have been made in this sub-section.

3 **Clear days.**—Memo. from the Remembrancer of Legal Affairs. "The term 'clear days' means days free and distinct both from that on which notice is given and from that on which the action is to be taken, 'Both terminal days are excluded.' Maxwell on Interpretation of Statutes, 310. The intention of the Legislature being to interpose an interval free for deliberation, the time expressed is essential to the carrying out of that intention, and therefore no consent on the part of the members served with notice, can validate a notice which does not allow that interval."

The Advocate General states:—The above interpretation of 'three clear days' as excluding both terminals is clearly right. I also think it is right that the councillors could not by consent validate a notice which did not allow this interval, as the provision seems to

me intended mainly for the benefit of the public and not of the councillors. (G. R. 4925 of 15th Dec. 1899, Gen. Dep.)

Now under section 38 (2) proceedings of meetings duly nominated are to be deemed to have been duly convened and held until the contrary is proved.

The ruling in *Patvari Vithaldas* vs. *Dhandhuka Town Municipality*, 1891, P. J., 445, which was based on section 27 (17), now repealed, does not therefore apply.

Under the English Act the clear days are "at least before the meeting" and are to count "from the date of the leaving or delivering by post on the councillor of the notice."

4 **Notice shall be circulated.**—See section 154 as to manner of service. Under the English Act it is "shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council 3 clear days at least before the meeting."

If a defendant alleges that a tax is illegal because of no notice of the meeting at which it was imposed having been served on all the councillors he must prove it, and in the absence of such proof the Court will presume that the municipality had used the regular procedure. (*Municipality of Sholapur* v. *Sholapur Spinning and Weaving Co.* I. L. R. (1895) 20 Bom. 732.) See also now sec. 38 (2.)

"A meeting (under sec. 1, Vestries Act. 1818) of a public body is not a legal meeting unless a notice to attend is served on all the members. *Dobson* vs. *Fussy*, 9 L. J. (O. S.) C. P., 72: 7 Bing. 305.

A public body entrusted with the performance of a public duty cannot hold a valid extraordinary meeting, except all the members be summoned who can be summoned, unless the unsummoned members are actually present at the meeting. The proceedings at a meeting at which any individual is not present, who might have been summoned, and was not, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned. *Rex.* vs. *Langhorne*, 6 N. and M., 203, 4-A. and E., 538.

Where certain acts of a corporation are to be performed at a special meeting, all the persons entitled to be present must be summoned if within summoning distance. The omission to summon any one so entitled renders invalid the proceedings at such meeting in his absence. On the party who supports the validity of such proceeding in the absence of a person who ought to have been summoned, rests the *onus* of showing a sufficient cause why such person was not summoned. With one person absent; who ought to have been summoned, even a unanimous decision of those present would be void. *Smyth* vs. *Darby*, 2 H. L. C., 789.

"Extraordinary meetings being thus summoned unexpectedly, the notice ought to specify very carefully and exactly the occasion of the summons, and all the business proposed to be transacted thereat, so as to call the attention of each member to the circumstances." *Brice on Ultra Vires*, 840.

When a special meeting is requisite to do an act which is beyond the competence of an ordinary meeting, the court will require proof that a full and clear intimation was given that the special meeting would be called to consider such matter. In the absence of adequate notice to the parties entitled to attend, the decision of those present will be deemed invalid. *Vale of Neath Brewery Co, in re.* 21 L. J., Ch. 688: 1 De. Gex. M. and G., 421.

Notice not good unless served on every councillor.—*Held*, that the provisions of section 11, (1) (Bom. Act VI of 1873), as to notice of meeting are not directory, but obligatory; and notice to all the councillors of the meeting, being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validity of that tax. Consequently the resolution was not legal, and whether sanctioned or not by the Government, it always retained its inherent defect. (*Joshi Kalidas* vs. *The Dakor Town Municipality*, I. L. R. 7, Bom. 399.)

5 **And posted up at the municipal office.**—Where a meeting was convened without the notice being so posted up, *held* that this fact alone would not suffice to nullify the proceedings at such meeting unless any one was shown to have been prejudiced in consequence of the omission.

6 **Chairman of meeting to be elected when president and vice absent:**—By section 24 (*a*), the president must, unless prevented, and by section 25 (*a*) the vice-president must, in the absence of the president and unless prevented, preside.

This sub-section is section 27 (6) of Bom. Act II of 1884, re-enacted, and follows section 30 (1) of the Madras Act; the last clause clearly defines the power of the chairman for the time chosen.

If the appointed Chairman be not present at the hour fixed for the meeting, the election of his substitute may be effected at once (as is provided by the statutory rules for the conduct of local and school boards and boards of directors), and unless otherwise ordered,

he retains the chair during that sitting although the appointed Chairman may subsequently join the meeting. The moment to be taken for the election of an occasional Chairman may accordingly be left to the discretion of the meeting.

"It is undesirable, however, that a meeting where attendance is large and the occasion is of special importance, should be called upon forthwith to fill up the vacancy caused by the absence of an appointed Chairman, and the rule prescribed by the Companies Act, 1862, to meet such an emergency, might generally be followed. This rules enacts that if there is no regular Chairman of a shareholders' meeting, or 'if he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be Chairman.' *Palgrave's Chairman's Handbook* p. 12.

Chosen Chairman:—Apparently this choice is to be made even if there be no quorum, for otherwise there would, in the absence of the president and vice-president, be no presiding authority to adjourn a meeting at which there is no quorum. *Vide* sub-section (7.)

7 **Municipal meetings ordinarily open to public.**—Under sec. 36 (*e*) of the Bombay City Act, the decision to close a meeting to the public is to be by resolution of "a majority of the councillors present."

The Madras Act says, the public or any particular individual may be desired to withdraw and the reason for this must be recorded in the minute book.

Under the English Act neither the public nor burgesses nor representatives of the Press have any common law right to attend the meetings of the council, unless the council expressly or impliedly consents to such attendance. (See *Tenby Corporation* v. *Mason* (1908) 1 Ch. 457 C. A.)

8 **Quorum.**—This is section 27 (4), Bom. Act II of 1884, somewhat altered.

Under the English Act the quorum, in the matter of making by-laws, must be $\frac{3}{4}$rds of the council present. See notes to sub-section (11).

Under the Madras Act, the quorum must be 4 or $\frac{1}{3}$rd the whole whichever greater, and the meeting must wait at least $\frac{1}{2}$ an hour before adjourning.

The Punjab Act, section 21, requires that the quorum be 3, or for a special meeting $\frac{1}{2}$ the committee, and for an ordinary meeting such number as may be fixed by by-laws, whichever greater.

The C. P. Act requires $\frac{1}{2}$ for a special meeting and for an ordinary meeting the quorum is to be fixed by by-laws but shall not be less than 3. The N. W. P. Act is the same without any minimum.

"*The whole number of councillors*":—That is the number fixed under section 11 (*a*), and not the number who may happen to be holding office at the time. This is the construction which has been placed upon the corresponding provision in the English Act.

Though under sec. 38 (3) the proceedings of a municipality are not invalidated by reason of any vacancy, this will probably not obviate the necessity for the number present at any meeting being that here prescribed.

See I. L. R. 21, All. 348, as to the effect of non-compliance with these provisions on the validity of acts.

9 **From the beginning to the end thereof.**—If during a meeting there should be less than the number required for a quorum, owing to a councillor or councillors leaving the meeting, would any business transacted thereafter be legal? Under the Bombay City Act, the obligation to adjourn is only when the fact shall be brought to the notice of the presiding authority.

Section 38 (2) provides that proceedings are to be good and valid, "*until the contrary is proved.*" This is copied from the Bombay City Act. Under that Act therefore it would appear that in order to vitiate proceedings conducted without a quorum, it would be necessary to prove that the fact was brought to the notice of the presiding authority. Under the present Act, however, the business could be held to be illegal, apparently, even where the presiding authority did not know there was not a quorum.

"The maintenance of a quorum during the holding of a meeting in the first instance devolves upon the Chairman. He is bound to ascertain that a quorum is present before he permits the meeting to proceed to business; but custom, after the sitting has commenced, lays that duty on the members of the meeting at large. This is the practice of the House of Commons itself; though, for select committees, the House adopts a stricter method. The clerk of the committee is specially charged, whenever a quorum is not present, to bring that fact to the attention of the Chairman, who is thereupon to suspend the proceedings of the committee until a quorum be present, or to adjourn the committee to some future day. This

regulation might be generally adopted, coupled with the limitation provided for the School Board for London, which sanctions an interval of five minutes as a period of grace for the possible re-assembly of a quorum before its presence is officially declared."—*Palgrave's Chairman's Hand-book*, p. 17.

It should be observed that the notice of the adjourned meeting need not be given to each councillor as in the case of an original meeting under sub-section (3).

10 **Presiding authority.**—When there is not a quorum present at an original meeting of councillors, it is the duty of the presiding authority, under section 27 (4) of Bombay Act II of 1884, to adjourn the meeting. Having thus adjourned the meeting, the presiding authority is, in my opinion, in this matter *functus officio*, so that he cannot, after the adjournment, alter his decision, whether upon a requisition of councillors or otherwise. If the day and hour fixed for an adjourned meeting are inconvenient, the proper course is for the councillors to assemble at the time fixed and at once to vote a further adjournment under clause (8)" (now 26 (iii). (G. R. 1924 of 3rd June 1897, Gen. Dep.)

11 **Or at any subsequent adjournment thereof.**—These words finally settle the point discussed in G. R. 4921 of 27th Nov. 1889, Gen. Dep.

When an original meeting has once been adjourned for want of a quorum, then that character of the subsequent meeting is changed, and is complete without a quorum, and the meeting becomes qualified to act in regard to the business left undisposed of, as if it were a full quorum, and may thereafter make its own arrangements as to adjournments and the like under section 27 (8), as a meeting fully qualified with reference to that particular business. In like manner is a subsequent adjournment of such meeting qualified.

If the matter is one which is only brought up as an amendment to a substantive proposition, it is not a subject which was finally disposed of at that meeting, and therefore its re-consideration at a meeting as a substantive proposition within the period allowed by the section was permissible. (See I. L. R. 37, Cal. 44.)

12 **"Except with the permission of the presiding authority"**—These words govern the rest of the clause, and therefore, though the particular business was not mentioned in the notice convening the meeting, a resolution such as the imposition of house tax, passed at that meeting was held not to be illegal. (The *Surat Municipality* vs. *Ochhavrám*, 21 Bom. 630.)

Again at an ordinary general meeting of a District Municipality any matter whether on the agenda paper or not can be transacted with the permission of the presiding authority and that permission may be either tacitly or expressly given. (*Hiralal* vs. the *Thana Municipality*, 1891, P. J. 84).

Under the Bombay City Act at least ⅔ths and not less than 15 of the councillors present must assent.

13 **Minutes.**—See Orr's Model Rule 36 for a "Form of Minutes."

The record of proceedings of municipal committees are "public documents" within the meaning of section 74 of the Indian Evidence Act, 1872, and under section 78 of that Act are proved by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of the committee.

If proceedings are minuted in accordance with this sub-section, they are to be held good and valid until the contrary is proved. Sec. 38 (2).

The Panjab Act also requires copy of minutes to be sent to the Deputy Commissioner within 3 days. The C. P. Act says within 6 days, and the N. W. P. Act says 10 days.

Minutes of Proceedings.—"The precise form in which the minutes of a Board should be kept, and whether letters and other documents should be placed thereon, or entered upon detached appendices, are matters which may be left to individual experience, so long as an adequate method of arrangement and of cross-reference be provided. The entries essential to due record of procedure are as follows:—Resolutions in the precise form in which they were put from the chair; every question proposed or put from the chair, whether withdrawn, negatived, or superseded; the names of those who voted, together with the number of the votes given upon each division; the names also of those present at each division who, if usage so permit, took part in the debate, but abstained from voting; Chairman's decisions, upon matters of order, and statements of their opinion regarding practice or procedure; the day and hour upon which a postponed or adjourned proceeding is to be considered. If a special form of notice of business involving the appointment or dismissal of officers, or other important matter, is prescribed, the fact that such notice has been given should be recorded. Indexes also to the minutes and appendices should be kept up systematically so as to form a complete annual register to the proceedings."—*Palgrave's Chairman's Handbook*, p. 97.

Confirmation of minutes.—"The confirmation of minutes is, it must be remembered, a formal proceeding designed solely for the ratification of the record. No discussion can accordingly be raised thereon regarding the policy enforced by the minutes; far less can general debate be allowed; nor can any amendment be moved to that motion." Palgraves Chairman's Handbook p. 17.

"Reg. v. York, Mayor.—In the case of meetings of public bodies 'confirm' is commonly used in the sense of 'to verify.' Per Lord Campbell, C. J.:—To confirm the minutes of a meeting means not to give them force, but to declare them accurate. (I. E. and B., 588, at page 594.)" *Chamber's Handbook of Public Meetings*, p. 106. See Orr's Model Rules 4 and 5.

14 **Inspection.**—This follows the Panjab and C. P. Acts, which however, add and "without charge."

Under the Bombay City Act they are open to "any councillor free of charge, and to any other person on payment of a fee of 8 annas."

Under the Madras Act, the inspection is limited to "any person who pays any tax under the Act," and copies of the minutes are to be sent to the Revenue officer for publication in the District Gazette in English and in the vernacular within 3 days after the meeting.

Under the English Act, the minutes are open to the inspection of a burgess at any reasonable time during the ordinary hours of business on payment of 1 shilling and he may make a copy thereof or take an extract therefrom, and this also applies to minutes of committees which have been submitted to the council for approval.

Obstruction to inspection is punishable on summary conviction.

As to the right of a member of a corporation to inspect the books, see the principles discussed in *Bank of Bombay* v. *Sulleman Somji* (1908) 10 Bom. L. R. 636; 18 Mad. L. J. 355.

The books of a corporation are, as a general rule, open to the inspection of the corporators only (in proper cases the right of inspection may be exercised by an accountant appointed by the persons entitled to inspect. *Norey* v. *Keep* (1909) 1 Ch. 561) for corporate purposes (*Finch* v. *Ely* 2 Man. Ry. (K. B.) 127 at p. 129; *R.* v. *Southwold Corporation* 97 L. T. 431; *R.* v. *Bradford an Avon R. Dist. Council* (1908) 99 L. T.

But neither individual member nor a number of members of a corporation are entitled to demand a general inspection of the muniments, deeds, books and documents belonging to the corporation as a whole, unless it can be shown that such inspection is required in connection with some definite and particular matter in dispute between the members themselves or between the corporation on the one hand and individual members on the other. The Court will not order an inspection on general charges, or merely for the purposes of discovering whether charges can be made. *R.* v. *Merchant Tailors* Co. 2 B. Ad. 115; *Bank of Bombay* v. *Sulleman Somji* (1908) L. R. 35 Ind. Appl. 130.

Enforcement of right to inspect.—A private right in a member to persue and take copies of a book of a corporation may be enforced by injunction restraining the corporation from continuing to refuse to comply with such right, or by an action of *mandamus* or for a mandatory injunction directed to the corporation to comply with such right. In such a case the Court has no jurisdiction to inquire into the motives of the applicant. *Devies* v. *Gas Light & Coke Co.* (1909) 1 Ch., 708 C. A.; *Noray* v. *Keep* (1909) 1 Ch., 561).

Furnishing copies and charging copying fees, see notes to section 46 *(c)*.

Inhabitant.—See note 7, section 11.

15 **Second or casting vote.**—When the presiding authority has a vote, he should give that vote before declaring the number of votes for and against a motion, and then in case of an equality of votes, he should give his casting vote.

Under the English Act he may give a conditional casting vote to operate in the event of the voting being equal (*Bland* v. *Buchanan* (1901) 2 K. B. 75).

If the presiding authority has *not* a casting vote and there is an equality of votes it would seem that the ancient rule of the Houses of Lords "that the non-content Lords 'have it'" should prevail and the motion must be held to be lost. But see Orr's Model Rule 29.

16 **Record of votes.**—By section 27 (15) of the old Act, the names of the voters for or against any resolution were to be recorded in the minutes only if any member so desired. Now the results of all voting are to be recorded as may be prescribed by rules. This disposed of the various difficult points discussed in G. R. 2385 of 7th June 1899, and leaves it to each municipality by its rules to prescribe whether the voting is to be open or by ballot secretly.

The usual course is for the presiding authority to count the votes for and against each proposition and declare which is in the majority or whether there is an equality.

If there is more than one proposition on the same subject, each should be proposed and seconded. The first proposal would be the original proposition and each subsequent proposition would be by way of an amendment on that proposition.

If it be found necessary, the mode of voting may be regulated by a by-law. (G. R. 17 of 5th January 1885, Gen. Dep.) Under this Act it will be by rules under sec. 46 (*a*). See Orr's Model Rules 23 to 34.

17 **Adjournment of meetings.**—This is section 27 (8) of the old Act of 1884.

"Section 27 (4) allows a meeting to proceed with business, notwithstanding a quorum be not present, in one instance only, *viz.*, when the original meeting was adjourned for want of a quorum. *Expressio unius est exclusio alterius.* "The intention of the legislature appears to me to have been this—Business which has after special adjournment for the purpose, failed a second time to attract a quorum, is presumably of so little interest and importance or so unlikely to meet with opposition, that a further adjournment is unnecessary and dispensed with.

"But business which has at the last meeting attracted a quorum, is evidently entitled to more consideration and fuller discussion, and therefore, if at the adjourned meeting the quorum fail to be present, it is attributable to accident rather than to indifference, and the meeting must be again adjourned. (G. R. 3554 of 29 August 1889.)

The following opinion of the Legal Remembrancer, though given under clause (4) of the old Act (corresponding to sub-sec. 7) is no longer applicable to that sub-sec., may be applied to this sub-sec. (11), *mutatis mutandis*:—

"It is not, in my opinion, illegal to adjourn a meeting, under clause (4) to some hour of the same day. No doubt 'adjourn' in its etymological meaning, implies a putting off from one day to another. '*Adjournamantum est ad diem dicere, seu diem dare* (An adjournment is to appoint a day, or to give a day)' (Wharton's Law Lexicon, tit. 'Adjournment'). But the word is now ordinarily used for suspending business for any period, however long or short. Webster defines it to mean: "to suspend business for a time, as from one day to another or for a longer period or indefinitely; usually, to suspend business as of Legislatures and Courts for repose or refreshment. So the House of Lords frequently 'adjourns during pleasure,' which means that the Lord Chancellor may cause business to proceed at any hour within the day on which such adjournment takes place, but usage has fixed 5 o'clock P. M. as the time for resuming after an adjournment 'during pleasure' (Wharton's Law Lexicon, tit. 'Adjournment'). (G. R. 1924 of 3rd June 1897, Gen. Dep.)

18 **Cancelling &c., resolutions.**—This is taken from Madras Act IV of 1884, sec. 30 (6). 18 and 19 Victoria, Chapter 120, sec. 57, contains very similar provisions.

"Bodies invested with special powers are generally restrained by their constating instruments from a capricious or factious exercise of their power of revocation. 18 and 19 Victoria, Chapter 120, section 57, is an instance of this.

The sub-section more clearly defines the condition under which a proposal to modify a resolution passed within three months may be entertained and adopted.

By sub-section (8) the presiding authority cannot permit such a motion or proposition being made unless certain conditions are complied with. The object is to prevent capricious changes of policy and to secure continuity.

A rule requiring a majority of *more* than ½ the total number of councillors would appear to be invalid.

19 **Notice to Government Officers.**—Sub-sec. (13) is sec. 27 (14) of Bom. II of 1884, re-enacted. See note to sub-sec. (8).

The necessity for giving fifteen days notice in all cases, however trivial, was considered by the Special Committee, but no alteration in the law was thought necessary. It was also suggested that it should be left to the presiding authority to decide when a notice was really necessary, and that if these Government officers afterwards took objection to the business transacted they should have the power to ask for a reconsideration. This also was not adopted.

Executive Engineer.—See Appendix G. Part II.

The Executive Engineer should assist municipalities in the execution of smaller works whenever he can do so without prejudice to his other duties; but Government officers cannot be allowed to receive remuneration other than their authorised pay and allowances. (G. R. No. 630-1399, July 11th, 1866.)

20 **Educational matter.**—The term is not defined in the Act, and this provision that no business relating to *any educational matter* can be transacted without notice being given to the Educational Department, necessitates such notice being issued every time a Committee

meets. It was said that this was rather absurd in petty little cases of no importance and so it was suggested that notice should be required only if the subject was of a controversial nature.

21 **Government Officers to attend meetings.**—These clauses (*a*) and (*b*) are a reproduction of sec. 28 of Bom. Act II of 1884, with the exception of the first 6 words which are new.

This sub-section also applies to committee meetings (sec. 34 (1)).

These officers are generally nominated members of the municipality at the huzur station. When they are such, they will be served with the usual notice of meeting to be given all members under sec. 27 and rules thereunder, and then no special notice will be necessary.

By Bombay Act IX of 1862, the Executive Engineer when travelling in the districts of which he has executive charge could take part in the proceedings of any municipal bodies situated therein, and assist them with his professional opinion and advice. The same ruling applies to the Civil Surgeon.—G. R. No. 1933, December 12th, 1862.

Travelling allowance.—Officers required to attend meetings of municipal or Local Boards cannot be allowed travelling allowances. When an officer of the Educational Department has to travel to a place where he has to attend a meeting of the municipal or Local Board in addition to discharging inspection or other duties pertaining to his office, he can draw the T. A. admissible to him under the rules. (G. R. 3220 of 1st May 1889, Rev. Dep.; G. R. 2395 of 20th June; and 3338 of 2nd September 1889.)

22 **Consent.**—This will have to be given by a resolution duly voted for and passed. To avoid this waste of time of a municipality, it was suggested, the consent should be that of the presiding authority. But this was not adopted.

23 **Govt. Officers not to move proposals.**—This would seem to imply that these officers have no right to move a formal proposition unless they are members of the municipality. In these circumstances if they wish to make any proposition they should cause the same to be formally put by one of the members. (G. R. No. 2282 of 19th June 1885, Gen. Dep.)

Right of Municipal Commissioner to be present and to speak at municipal meetings.

26-A. A Municipal Commissioner shall have the same right of being present at a meeting of the municipality and of taking part in the discussion thereat as a councillor and with the consent of a majority of the councillors present, ascertained by a show of hands, without discussion, may at any time make a statement or explanation of facts, but he shall not be at liberty to vote upon, or to make any proposition at such meeting.

Origin of section.—This was inserted by section 9 of the Amending Act of 1914 and is taken from section 36 (*t*) of the Bombay City Act. "This provision, it is believed, will conduct to harmony in the relations between the municipality and their chief executive officer."

It was objected that, if the Municipal Commissioner were present, councillors would be loath to criticise any actions of his which might be open to criticism, but it was urged that if this were so it were best in the interests of all that the Municipal Commissioner should be present to give his explanation and perhaps remove any misunderstanding.

It was then suggested that power should be given to the municipality to exclude him from the meeting under circumstances where by a majority of ⅔ of its members this was considered desirable; but after some discussion this proposal was lost.

(2) *Committees.*[1]

[1] Managing Committees.

27. (1) In every municipality there shall be a committee called the managing committee, consisting of such number of councillors not exceeding nine or less than four, as may have been elected for a period not exceeding one year, in accordance with rules under clause (*a*) of section 46 :

[3]provided that in any municipal district where there is a Chamber of Commerce, such Chamber shall, if the [4]Governor in Council so directs, be entitled to elect one councillor to be a member of the managing committee.

Powers of Managing Committees.

(2) The managing committee shall, subject

(i) to any limitations prescribed by the municipality specially in this behalf and generally by rules made under clause (*a*) of section 46, and

(ii) to the provisions of chapter XIII and chapter XIII-A, exercise all the powers of the municipality :

provided that no managing committee shall exercise—

(*a*) any powers in connection with any school or educational institution in respect of which a committee is appointed under section 28, or

(*b*) any powers with which any committee appointed under section 29 is vested.

1 **Committees.**—The statutory provisions dealing with the constitution and functions of Municipal Committees have been systematically re-arranged and considerably amplified.

The Government of India vetoed the proposal that members of committees might, in certain cases, receive fees, like the Standing Committee in Bombay and the members of the Port Trusts.

A committee cannot delegate its power to a sub-committee nor to any of its members. (See *Corn* v *Ward* (1877) 2 C. P. D. 255, C. A.)

2 **Managing Committee.**—The maximum number of members has been prescribed in order to prevent Managing Committees from being inconveniently large.

This is a reversion to the policy of the Act of 1850 and has been adopted after full consideration, as it was considered essential for the purposes of municipal administration, especially in all but the smaller municipalities, that the multifarious duties and extensive powers of such bodies should be performed and exercised by a small strong committee, even though the President or Chief Officer is the motive power for carrying on the work.

This Committee corresponds to the Standing Committee of the Bombay Corporation, $\frac{1}{3}$ of the councillors of which are appointed by Government.

3 **Chamber of Commerce.**—The Bill as introduced reserved to Government a general power of appointment of councillors to the Managing Committee, to the number of one-half, but this was withdrawn and the power is now restricted to towns where there is a Chamber of Commerce (so far to Karachi alone) and then also to allow the election by such Chamber of one councillor only.

Objection was taken to the power thus given to Chambers to elect a member to the Managing Committee direct, and it was proposed that instead Government might appoint a member on the recommendation of the Chamber. It was urged that no where in this country was an outside body like a Chamber of Commerce allowed to elect members direct to the Managing Committee, and the right now given was novel and objectionable. The majority of the Legislative Council however over-ruled this objection.

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

School committees.[1]

28. The municipality may appoint, subject to such limitations as are prescribed by the rules for the time being in force under section 46 and subject also to the proviso contained in section 58, a committee consisting of such councillors as they think fit, for managing all or any primary or other schools vested in or maintained by the municipality, or for conducting the business of the municipality in respect of any educational institutions aided by the municipality.

1 **School Committee.**—This emphasises the importance of the municipality's duties in regard to education.

The appointment of a school committee was purposely left discretional, as it was considered that having regard to the very divers circumstances of municipalities it was desirable to have some elasticity in these provisions.

Under the Bombay City Act, Government appoint the 4 councillors who form ¼ of the school committee.

Other executive committees.

29. Subject to the limitations prescribed by the rules aforesaid, the municipality may appoint for a period not exceeding one year, any such committee or such or so many committees consisting of such councillors as they think fit for any purpose or respectively for any of the purposes, other than those specified in section 28, for which a managing committee may, under section 27, exercise the powers of a municipality, and may invest each committee so appointed with such of the said powers as may be necessary or expedient for the fulfilment of the purpose for which it is appointed.

Other Committees.—This re-enacts the powers of a municipality under the old Act, sec. 27 (10) to delegate their functions to committees. This section was added to provide for the appointment of Special Administrative Committees for other than educational purposes.

The C. P. Act gives power to form sub-committees for one or more wards.

See section 46 (*a*) which provides for rules being made for regulating the delegation of any of the powers or duties of a municipality to committees. This shows that municipalities are not expected to tie themselves down by rules in such a way as to oblige themselves to delegate any particular set of powers to any set of councillors. The rules are not required to delegate the powers and duties but to regulate the municipality in delegating. (See note to section 46.)

Committees are delegates of the powers and duties of the municipality and are intended to exercise their discretion as a directing body, not to perform ministerial functions, with personal responsibility attaching, as in the case of the President.

The functions of the President are executive, those of the committees and their chairman, deliberative.

Provision for discontinuance or alteration of the constitution of these committees is not made here as in section 30.

Consultative committees.

30. The municipality may from time to time, appoint such or so many other committees consisting of such councillors as they think fit, and may refer to such committees for enquiry and report, or for opinion, such special subjects relating to the purposes of this Act as the municipality shall think fit, and may at any time discontinue, or alter

the constitution of, any such committee. The municipality may direct that the report of any such committee shall be made to the managing committee, instead of the municipality.

The first part of it is taken from sec. 38 of the Bom. City Act. and the clause as to discontinuance, &c., of the committee is taken from sec. 27 (10) of the old Act.

When persons other than councillors may serve on committees.

31. Notwithstanding anything contained in this Act, it shall be lawful for the municipality from time to time, by a resolution supported by not less than one-half of the whole number of councillors to appoint, as members of any committee under sections 28, 29 or 30, any persons of either sex, who are not councillors, but who may in the opinion of such municipality possess special qualifications for serving on such committee: provided that the number of persons so appointed on any committee shall not exceed one-third of the total number of the members of such committee.

Duties, &c., of such persons.

All the provisions of this Act relating to the duties, powers, liabilities, disqualifications and disabilities of councillors shall, save as regards the disqualification on the ground of sex, be applicable so far as may be to such persons.

Outsiders on committees.—This embodies a suggestion that the services of local experts or specialists, who may be unwilling to undertake all the duties and responsibilities of councillors, should not necessarily be lost to the municipality, but might be made available on Special Committees in connection with licensed schools and other subjects. The Honourable Mr. Lely remarks "There is plenty of precedent for such a proposal. In England the Mayor and Aldermen may be chosen from the general body of citizens, though as a fact they very seldom are. It is to the continent that we must chiefly look for examples, and so far as I can gather from a study of Mr. Albert Shaw's book 'municipal Government in continental Europe' much of the brilliant success of the French and German and other municipalities is due to their utilising with open hands the help of all the best men in the locality, whether in the council or not. In Paris the committee for enquiring into sanitary dwellings is composed of well-known physicians, architects, engineers and other qualified outsiders. Their Health Department, their poor law, their municipal pawnshops, are managed by able and public-spirited persons, many of whom are not in the regular municipal groove; *i. e.*, are not councillors, and who combine voluntary action with the authority of law. Even the Municipal School Boards in France are nominated by the Town Council usually but not necessarily from its own membership." (Shaw, page 290.)

"The municipality is not so much one self-contained agency as a nucleus of agencies."

It will be observed that the section is so worded that no person need be debarred by reason of sex from serving on such committees.

Casual vacancies—re-eligibility.

32. A vacancy occurring in a managing committee shall, as soon as possible, and a vacancy occuring in any other committee may be filled up by the election of a member from among the general body of councillors subject to the same provisions as those under which the member whose place is to be filled up, was elected. A councillor shall be eligible at any time for re-election as a member of any such committee notwithstanding that he has previously been a member of that committee.

When chairman to be *ex-officio*.

33. (1) The president or vice-president, if appointed a member of any committee, shall be *ex-officio* chairman thereof.

When no *ex-officio* chairman, municipality may appoint chairman.

(2) The municipality may appoint a chairman for every committee of which there is no *ex-officio* chairman.

When *ex-officio* or appointed chairman does not attend meeting, committee may appoint chairman of meeting.

(3) Every committee, of which there is an *ex-officio* chairman or a chairman appointed by the municipality, shall, at each meeting which such chairman does not attend as chairman, appoint from its members a chairman for such meeting.

If there is no chairman, *ex-officio* or appointed by the municipality, committee may appoint chairman.

(4) Every committee, of which there is no *ex-officio* chairman or chairman appointed by the municipality, shall appoint from time to time its own chairman from among its own members.

Procedure at meetings.

34. (1) The provisions of sub-sections (4), (9), (10) and (14) of section 26 shall be complied with in all proceedings of committees as if meetings of committees were included in all references to meetings of a municipality contained in those provisions, and as if for the word "municipality," where it occurs in the proviso to clause (*a*) of sub-section (14) of 26, there were substituted the word "committee."

[1]Provided that, notwithstanding anything to the contrary contained in sub-section (9) of section 26, committees may record their proceedings either in English or in the vernacular language, as they may think fit.

Committee may meet when they think proper.

(2) Committees may meet and adjourn as they think proper, but the chairman of the committee may, whenever he thinks fit, and shall, upon the written request of the president of the municipality or of not less than two members of a committee, call a special meeting of such committee.

Number of members required to form a quorum at committee meetings.[2]

(3) No business shall be transacted at any committee meeting unless more than one-half of the members of the committee be present thereat.

1 **Proviso.**—This was inserted by section 11 of the Amending Bill of 1914. The Bill proposed adding after 'proceedings' the words "other than their decisions," but these were omitted.

2 **Sub-section (3).**—This is taken from the latter ½ of section 27 (13) of the old Act, with this important difference that, whereas formerly the minimum for a quorum was ⅔rds of the members of the committee, it is now only ½.

Under the Bombay City Act, ⅔rds of the members must be present *from the beginning to the end* of the meeting.

35. (1) Notwithstanding anything contained in the preceding section the chairman of the committee, whenever it appears to him unnecessary to convene a meeting, may, instead of so doing, circulate a written proposition of his own, or of any other member of the committee, or of any executive officer of the municipality, for the observations and votes of the members of the committee.

[1] Procedure by circular.

(2) Previous to circulating any such proposition as aforesaid, the chairman may, if he thinks fit, and, if the business to which it relates is of the nature described in sub-section (13) of section 26, shall obtain thereupon the remarks, if any, which any Government officer, not a councillor, whose presence the municipality would be entitled to require under the provisions of clause (*b*) of sub-section (14) of section 26, desires to record.

Propositions when to be sent to Government officers for remarks.

(3) The decision on any proposition so circulated shall be in accordance with the majority of votes of the members of the committee who vote upon it, unless a special meeting is convened to consider the said proposition.

Decisions how to be taken on propositions circulated,

(4) Every decision arrived at by the committee under this section shall be recorded in the minute-book kept under sub-section (9) of section 26.

and how to be recorded.

(5) Notwithstanding anything in this Act contained the [2]Commissioner may by notification authorise the adoption by any municipality specified in such notification not being a City Municipality, of the procedure prescribed by this section, for the disposal of any business, whenever the president of such municipality may deem it unnecessary to convene a general meeting for the purpose of such business.

[3]Procedure by circular when applicable to other municipal business.

1 **Origin of section.**—This section is a re-enactment of sec. 29 of the old Act, with this exception that whereas the old section applied this procedure by circular to all meetings, it is now restricted ordinarily to committee meetings only, and only extraordinarily under sub-section (5) (which is new) to meetings of the smaller municipalities, not being City Municipalities.

2 **Commissioner.**—This has been substituted for 'Governor-in-Council' by the Bom. Act III of 1915.

3 **Procedure by circular.**—Under the old Act it was ruled by G. R. 4619 of 29th June 1886, Rev. Dep. and 3554 of 29th Aug. 1889, Gen. Dep., that an *official* president could being forward propositions at a meeting and also second propositions.

If on the proposition or statement so circulated one-fourth or more of the members write endorsements requesting a special meeting to be called to consider the subject, the President is bound to call the special meeting under sec. 26 (2): so also if, after the written proposition is circulated, and before the votes of all have been taken one-fourth or more of the members send the President a written request to call a special meeting. (G. R. 2486 of 15th July 1886, Gen. Dep.)

36. (1) Every committee shall conform to any instructions that may from time to time be given to them by the municipality; the municipality may, at any time, call for any extract from any proceedings of any committee, and for any return, statement or account or report concerning or connected with any matter with which any committee has been authorised or directed to deal, and every such requisition shall, without unreasonable delay, be complied with by the committee so called upon.

[1]Subordination of committees to instructions of municipality, and compliance with requisitions of municipality.

(2) Every order passed by a managing committee or by a committee appointed under section 28 or 29, other than orders under sub-section (3) of section 65, shall be subject to such revision, and open to such appeal, as may be required or allowed in respect thereof by any rules of the municipality for the time being in force under section 46.

[2]Order subject to revision and appeal.

1 **Origin of section.**—The first part of sub-section (1) is taken from sec. 27 (10) of the old Act; and the second part from sec. 65 of the Bombay City Act.

2 **Revision and appeal.**—See Bom. Act VI of 1876, sec. 14 (2), (*a*), (*i*).

It was said that the provisions of this sub-section were far too general and that it was a mistake not to limit more the right to appeal or revision. It was urged that the inefficiency of many municipalities was due to a very considerable extent to the fact that the managing committee's orders are liable to be upset, and are in practise constantly upset by the general committee. Members of the former often vote for the right thing, when the matter is before them on the minor committee, and then deliberately vote on the opposite side when the question comes before the municipality. This is particularly the case when the question is one of the punishment or dismissal of inefficient subordinates. On the managing committee, there is usually more strength and the weak member dare not oppose, but when surrounded by the many feeble mediocrities who have seats in the general committee he gives in, the result being often deplorable. It was suggested that the orders of the managing committee should not be reversible by the general committee on matters connected with subordinates, except when they relate to the Chief Executive Officers, nor on any but special matters.

Omission of provision for appeal in sec. 46.—Section 46 no where provides for any appeal on revision. Apparently this omission should be supplied by an amendment of that section. See Orr's Model Rules 56 to 60.

Appeals &c. from orders of municipality.—The Act makes no provision for this, except so far as Chapter XII, "control" may operate to this end. See note to section 173.

The Panjab Act allows an appeal in certain cases from orders of a committee to an officer appointed by Government. The words used are 'may appeal' and adds "no such order shall be liable to be called in question otherwise than by such appeal." Further that the order of the appellate authority "shall be final." See note to section 96.

It also provides (sec. 170) that if, in certain cases, the order is subject to appeal, and an appeal has been instituted against it, all proceedings to enforce such order and all prosecutions for any breach thereof shall be suspended, pending decision of the appeal, and, if such order is set aside on appeal, disobedience thereof shall not be deemed to be an offence.

Redress provided by Act must be resorted to before civil suit will lie.—By a rule under the old Municipal Act, Bom. 26 of 1850, "all complaints against the municipality shall be addressed in the first instance to the municipal Commissioners. Persons dissatisfied with that decision, may, prefer an appeal to the Collector," who may dismiss it, or cause redress to be afforded to the complainant; and in case of doubt the Collector "shall refer the matter to the Commissioner, whose decision shall be final."

A, having been given notice by the municipality to remove his hut, appealed to the Collector, but before the Collector could give his decision, A filed his suit in the Civil Court,

which however decided that the suit was barred by reason of A not having availed himself of the remedy prescribed by the rules of the municipality.

Couch C. J. confirming the decision of the lower Court, says, after referring to the rules—"The object of these rules seems to be a very proper one to provide a mode of special redress in questions which must arise in the exercise by the municipality of the powers conferred upon it by the Act, which would be sufficient for the purposes of justice in the great majority of cases, and would avoid all unnecessary degradation of the authority of the municipal Commissioners. The plaintiff may have a rightful claim, but he cannot at present enforce it by Civil suit, as the rules apply in this case. We have not now to consider whether the municipality had power to issue the notices, and whether they issued them in the *bonâ fide* belief that there was an encroachment, for the lower courts have found that there was an encroachment; and there is nothing to show want of *bonâ fides* or irregularity in issuing the notices; and as plaintiff had not followed the course prescribed by the rules to obtain redress, it was not competent to him to bring this suit. It does not follow that if he does not get redress in the way prescribed by the rules he will not succeed in an action which he will then institute. We are, however, bound by the rules, and must satisfy ourselves that the procedure prescribed thus fails to give the proper redress before allowing an action to be brought. This is consistent with the judgement of *Tucker. J.*, in *Chima* vs. *The Magistrate of Khandesh.*" (*Sakaram* vs. *Chairman of the Municipality of Kalyan*, (1870) 7 Bom., H. C. R., A. C. J. 33).

Civil suit will lie notwithstanding right of appeal.—The policy of Government being, in pursuance of the principles of Local self-Government, to withdraw the official element from the constitution of municipalities while at the same time taking better powers of control, Bom. Act VI of 1873 took away this right of appeal to the Collector and Commissioner, as it recognised not only by sec. 86, the rights of parties to bring actions against a municipality or any of its servants for any act done under the Act, but it contained a new express provision (sec. 97) that nothing in the Act should be held to bar any person from suing any municipality in any Court for any loss or wrong occasioned to him by the said municipality, its officers or servants; and sec. 91 gave Government power to order a municipality to perform any neglected work or duty. Sec. 96 provided that complaints against the stipendary establishment should in the first instance be laid before the person primarily responsible for the executive administration with right to appeal, in any case in which the rules under sec. 14 allowed such appeal, to the President, or in town municipalities to the vice-president. In city municipalities, if the President differed from the order, he should lay it before the municipality; in town municipalities the decision of the President or Vice was final. Further, it substituted a rule under sec. 14 that "parties dissatisfied with the decision of the managing committee or of any sub-committee *may* prefer an appeal to the municipality whose decision shall be final."

Plaintiff having sued the municipality for damages and for an injunction to restrain it from stopping the supply of water to his house, the first Court allowed the claim, but the Judge on appeal dismissed the suit, holding (following the decision in *Sakaram* v. *Municipality of Kalyan)* that the suit was premature, as the plaintiff had not availed himself of the remedy prescribed in the rule above quoted. *Held,* reversing the decree, that, interpreting the intention of the Legislature, the rule must be construed as permissive and not mandatory. It referred to departmental procedure only and did not debar the institution of the civil suit. (*Vasudevacharyav The Municipality of Sholapur,* I. L. R. (1898), 22 Bom. 384).

In pursuance of the aforesaid policy, Bom. Act II of 1884, while introducing the element of election into the constitution of municipalities, repealed the said sec. 14 and its rules, as also sections 86, 96 and 97, and in substitution of the abolished *ex-officio* element, it provided for greater powers of control. Sec. 97 was omitted as unnecessary, there being nothing in the Acts which would bar any aggrieved person's ordinary remedy in the Civil Courts, and sec. 86 was reproduced in clearer language in sec. 48. Sec. 96 was not reproduced, but somewhat on the lines of the old rules under repealed sec. 14, the new section 32 required municipalities to frame rules regulating the conduct of their business, and this apparently included rules as to revision of, and appeals from orders of committees, &c., but no express provision on the subject was made in the Act itself. This has, however, now been revived by this sec. 36 (2) of the new Act.

Civil suit barred only if right of appeal obligatory.—Sec I. L. R. 27 B. 403 note sec. 86 where it was held that in 7 Bom. H. C. (A. C. J.) 33 the words of the section were imperative "shall in the first instance," but in 22 B. 384 the wording of the section was permissive, as it is in this section. The word is 'may' which is only directory.

But if the suit is for an injunction, as the Act provides a remedy, even though it is only permissive the High Court will not grant the injunction except in very clear cases.

No suit lies where right of appeal given and act complained of not ultra vires.—A municipality refused to refund Rs. 1-2-9 customs duty paid by plaintiff on certain goods on the

ground that plaintiff had exported them without verification as required by the rules made under Panjab Act XIII of 1884, section 154 (*j*). These rules also provided for an appeal to the Deputy Commissioner against orders passed under the rules. Plaintiff instead of appealing filed a suit in a S. C. Court for compensation for refusal to refund. *Held* that as plaintiff's remedy was by appeal, the suit did not lie I L. R. 2 M. 362 and 12 M. 105 at p. 108 followed I. L. R. 13 M. 78 distinguished as there there was an unlawful levy which is not alleged here, but an unlawful refusal to refund. The fact that the course of appeal is onerous or inconvenient is no justification for bringing a suit. (*Municipal Committee of Umballa* v. *Mohender Singh*, 118 P. L. R. 1911; 38 P. R. 1911 97 P. W. R. 1911; 1911 9 Ind. Cas. 1800)

Where Act makes an appeal only remedy, no civil remedy, if appeal not made.—Sec. 152 of the N.-W. P. and Oudh Municipalities Act 1900 having provided that no prohibition, notice or order, issued by a Municipal Board under section 87 as to the erection or re-erection of a building, was liable to be called in question otherwise than by means of an appeal under section 152, and no such appeal having been made, the Civil Court could not interfere as the order of the Board was not *ultra vires*. (See I. L. R. (1904) 26 All. 386, noted section 96.

In a case under Madras Forest Act, 1882. The Judges held—

"Thus new powers are given to Government by the Forest Act from the exercise of which individuals may receive injury, and a special mode of redressing such injury is given by the Act and special procedure provided. If such special mode of redress and procedure was not intended to exclude the jurisdiction of the ordinary Courts, most probably, a declaration to that effect would be found in the Act. But the mode of redress given by the Act is as suitable for the redress of the injury as the mode of redress in an ordinary action, and is perhaps more suitable by reason of the nature and extent of the inquiry that may be made in a fixed time, especially where claims may be numerous and speedy ascertainment of claims may be desirable. It is an established principle that when by an Act of the Legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary Courts is ousted, and in case of injury, the party cannot proceed by action. See *The Governor and Company of the Cast Plate Manufacturers* v. *Meredith* (4 T. R., 794); *Stevens* v. *Jeacoke* (11 Q. B., 731); *West* v. *Downman* (L. R. 14 Ch. D., 111).

In this case plaintiff sued in a Munsiff's Court to cancel the decision of a Forest Officer confirmed by a District Judge under section 10 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section. *Held* that the Munsiff had no jurisdiction to entertain the suit. (*Ramchandra* v. *the Secretary of State for India in Council*, I. L. R. 12 Madras, 105.) This was followed in (1911) 9 Ind. cases 1000. See further on this point note to section 86.

(3.) *Delegation of powers to individuals.*

37. Any powers or duties or executive functions which may be exercised or performed by or on behalf of the municipality may be delegated, in accordance with [2]rules to be made by the municipality in this behalf, to the president or to the vice-president, or to the chairman of the managing, school, or other committee, or to one or more stipendiary or honour officers, but without prejudice to any powers that may have been conferred on a Chief Officer in a City Municipality under Chapter XIII or on any committee by or under sections 27, 28 or 29; and each person, who exercises any power or performs any duty or function so delegated, may be paid all expenses necessarily incurred by him therein.

[1]Powers, duties and functions may be delegated to officers whose expenses may be paid.

[3]Provided that in a municipal district for which there is a Municipal Commissioner the powers or duties or executive functions under this Act or under any rule or by-law made hereunder conferred or imposed upon or vested in the Municipal Commissioner shall not be delegated save as provided in section 186-M.

1 **Delegation of powers, &c.**—See on this subject G. R. 8202 of 30th October 1889 which sets out an exhaustive opinion by the Legal Remembrancer under the provisions of the old Acts. See Compilation of Government Standing Orders, pages 1193-1198.

The Punjab Act, sec. 189, treats rules and by-laws in the same way as to publication, objections, amendment, &c.

The Decentralization Commission recommended that municipal councils should be able to delegate any of their administrative functions to committees, which may include persons not on the council.

2 **Delegation rules.**—Under sec. 46 (*a*) and (*b*). See Orr's Model Rule 65.

3 **Proviso.**—This was inserted by sec. 12 of the Amending Act of 1914.

(4.) *Validity of Proceedings.*

38. (1) No disqualification of, or defect in the election or appointment of, any person acting as councillor, or as the president or presiding authority of a general meeting or as chairman of a committee appointed under this Act, shall be deemed to vitiate any act or proceeding of the municipality or of any such committee, as the case may be, in which such person has taken part, whenever the [2]majority of persons, parties to such act or proceeding, were entitled to act.

[1]Acts and proceedings of municipality and committees not vitiated by disqualifications, &c., of members thereof.

(2.) Until the contrary is proved, every meeting of the municipality or of a committee appointed under this Act, in respect of the proceedings whereof a minute has been made and signed in accordance with this Act, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are the proceedings of a committee, such committee shall be deemed to have been duly constituted and to have had the power to deal with the matters referred to in the minute.

[3]Proceedings of meetings to be good and valid, until the contrary is proved.

(3.) During any vacancy in a municipality or committee the continuing councillors or members may act as if no vacancy had occurred.

Vacancy not to affect municipality's proceedings.

1 **Origin of section**—This section embodies the principles of sec. 27, clauses (16) and (17) of the old Act which are re-drafted and considerably amplified so as to afford fuller protection against the invalidation of proceedings for technical and other immaterial irregularities. Sub-sections (1), (2) and (3) are taken almost verbation from sections 52, 53, and 51, respectively, of the Bom. City Act.

This would cover a case in which a President, who had resigned as councillor, was re-appointed President on return from leave, without being re-appointed as councillor.

2 **Majority entitled to Act.**—Under the old Act such proceedings, &c., could not be called in question on the ground of such defect or disqualification; now they are valid "*whenever the majority of persons, parties to such act or proceeding are entitled to act.*"

Hence if it be shown that the majority were *not* entitled to act, a Civil Court will grant an injunction to restrain the municipality from carrying into effect such act or proceeding.

"*Parties to such act or proceeding.*"—Does this refer to *all* the councillors taking part in the meeting, or only to *those in favour of the resolution regarding* such act or proceeding? For instance, 12 councillors are present at a meeting at which it is resolved by 7 votes to 5 to carry out a certain act, &c. If 7 of the 12 are not entitled to act by reason of some disqualification or defect, the proceedings are invalid, but if only 5 they are not vitiated. If however the 5 not entitled to act are out of the 7 who voted for the resolution, it is clear that there would not be a valid majority in favour of the act and so the act itself could not have been. The apparent meaning is that so long as the disqualified are a minority among those taking part in the proceedings there is no invalidity even though the disqualified preponderate among those in favour of the act.

Suit against municipality for illegal acts.—"There appears to be no reason why a regular suit such as would fall within Article 2 of Schedule II of Act XV of 1877, should not be brought by any municipal tax-payer, who should call in question the legality of any act by a municipality consisting of a majority of persons disqualified to vote as councillors. *Cf.* I. L. R. 1 All, 269, I. L. R. 8-B, 241; 11 Q. B. D. 788. The limitation to such suit would be 90 days, but as the doing or omitting to do, the act alleged to be in pursuance of an enactment would be a continuing breach, the cause of action would be one 'arising *de die in diem.*'" *Queen* v. *Francis* 21 L. J. Q. B. 304.

Article 2 of schedule II is as follows:—

For compensation for doing, or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in British India.	90 days.	Time begins to run from when the act or omission takes place.

3 **Until the contrary is proved.**—Under the old Act, proceedings were not vitiated because of omission to give formal notice of any meeting, or "for any other such mere informality." See cases referred to in nots 4 and 5, section 26 (3). This is in accordance with the English Act section 22 (6).

Validity of other acts.—The Act contains no provision on this point in respect of acts of the municipality or its officers and servants other than councillors, but see note sec. 154.

(5.) *Joint transactions with other bodies.*

39. A municipality may from time to time—

[1]Joint committee of two or more municipalities or other local bodies.

(*a*) join with any other municipality or with any local board, cantonment authority, sanitary board, sanitary committee or committee appointed for an area notified under Chapter XIV, or with more than one such municipality, board, authority or committee,

(*i*) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested, and in appointing a chairman of such committee; and

(*ii*) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work, and any power which might be exercised by either or any of such bodies; and

(*iii*) in framing and modifying rules for regulating the proceedings of any such committee relating to the purpose for which the committee is appointed; and

(*b*) enter, subject to the sanction of the Governor in Council, into an agreement with a municipality, cantonment authority or committee appointed for an area notified as aforesaid, regarding the levy of octroi duty, whereby the octroi duties respectively leviable by the bodies so contracting may be levied together instead of separately within the limits of the area comprising the districts subject to the control of the said bodies.

[2]Agreement for joint levy of octroi.

If any difference of opinion arises between local bodies acting under this section, the decision thereupon of the Governor in Council, or of such officer as he appoints in this behalf, shall be final.

1 **Joint Committees.**—This section is a reproduction of sec. 31 of the old Act, with the exception of clause (*b*), which is new. The old section was taken from the C. P. Act, sec. 18.

2 **Octroi.**—See section 81 where power is given for the collection of octroi by one public body on behalf of others.

G. R. 4275 of 24th June 1908 G. D. sanctioned the division of octroi receipts between the municipal and cantonment authorities of Karachi.

(6.) *Contracts.*

40. (1) Every municipality shall be competent, subject to the restriction contained in sub-section (2), to lease, sell or otherwise transfer any [2]movable or immovable property which may, for the purposes of this Act, have become vested in or been acquired by them, and [3]so far as is not inconsistent with the provisions and purposes of this Act, to enter into and perform all such contracts as they may consider necessary or expedient in order to carry into effect the said provisions and purposes.

[1]Competency of municipality to lease, sell and contract.

(2.) In the case of every lease of immovable property for a term exceeding [4]seven years, and of every sale or other transfer of any such property, the previous [5]sanction of the Commissioner is required.

Subject in certain cases to sanction of Commissioner.

(3.) In the case

(*a*) of a lease for a period exceeding one year, or of a sale or other transfer, or contract for the purchase, of any immovable property,

Sanction by resolution at general meeting requisite to validity of certain contracts.

(*b*) of every contract which will involve expenditure not covered by a budget grant,

(*c*) of every contract the performance of which cannot be completed within the official year current at the date of the contract,

the sanction of the municipality by a resolution passed at a general meeting is required.

Sanction of municipality when requisite in other cases.

[6](4.) In the case of a contract for the purchase of movable property, or for the sale of any moveable property belonging to a municipality, if the expenditure which the purchase would involve, or the value of the property to be sold as estimated in the municipal accounts, exceeds

(*a*) in the case of a City municipality, Rs. 500,

(*b*) in the case of any other municipality, Rs. 250,

the sanction of the municipality is required.

Sanction by committees and individuals empowered.

(5) In the case of every contract not otherwise provided for in the preceding sub-sections of this section the sanction of the managing committee, or of such other committee, or of such individual as under the provisions of this Act or of the rules for the time being in force thereunder, is empowerd on this behalf, is required.

[7]Mode of executing contracts.

(6) Every contract entered into, by or on behalf of a municipality other than a contract to which sub-section (5) applies, shall be in writing, and shall be signed by the president or vice-president and two other councillors, and shall be sealed with the common seal of the municipality. Every contract to which sub-section (5) applies, shall be executed by the chairman of the managing committee, or by the chairman of such other committee, or by such other individual, as is empowered in that behalf, in such manner and form as, according to the law for the time being in force, would bind such chairman or individual if such contract were executed by him on his own behalf.

[8]Invalidity of contracts unless requirements of this section are fulfilled.

(7) No contract shall be binding on a municipality in any case referred to in this section, unless, all such requirements as are specified in sub-sections (2), (3), (4) or (5) in respect of such case are fulfilled, and unless it is executed in accordance with the provisions of sub-section (6) applicable thereto.

[9]This section to be subject to the provisions of chapter XIII A.

(8) The provisions of this section shall be subject to the provisons of Chapter XIII A.

1 **Origin of section.**—Sub-sections (1) and (2) are taken substantially from sec. 15 of the old Act.

This is a technical section re-enacting for the most part certain repealed sections of Act VI of 1873 which authorised municipalities in general terms to lease such property, but it having been found that some municipalities had taken advantage of the provision to lease land in perpetuity at a merely nominal rent which was in effect an out and out disposal of the property and was never intended by the legislature, opportunity has been taken to limit the power of municipalities to lease as well as to sell their immoveable property.

Sub-section (3), (4) and (5) have been drafted on the lines of sections 69 to 73 of the Bombay City Act, and sec. 19 of the Bombay City Improvement Act IV of 1898, and designates the authorities by which contracts of different classes may be sanctioned, and executed respectively.

Invitation of tenders.—There is no provision as to this in this Act as in the Bom. City Act, s. 72, the Cal. Act of 1879 s. 88.

European Stores how to be obtained.—As to the manner in which local bodies and corporations should obtain European stores for use on works constructed by them, Goverment think that as it cannot impose upon these bodies any restrictions on the subject without assuming a responsibility which it is desirable to avoid or without an amount of interference which might be prejudicial to local self-Government, such bodies should be allowed, subject to any control provided by the local laws, to make their own arrangement for the supply of stores, unless they should at any time be expending Government revenues on behalf of Government, or the Government should, in any special case in which it may advance to them funds for particular works, think proper to make a condition on the subject. It is expedient that a system of inviting tenders or materials required for all important works, or for the supply of plant, &c., should, as far as possible, be followed by all public bodies; and that in the annual report of the public body concerned, a brief statement to the extent to which during the year the system has been followed should be included (Government of India No. 1-74 of 10th May 1888, Home Dep., G. R. 2046 of 30th June 1888, Fin. Dep.)

The rules for such purchases are embodied in Appendix O to Vol., I. P. W. D. Code. The rules in Government of India No. 185 of 10th January 1883, Fin. and Com. Deps., are compulsorily applied to Imperial and Provincial Departments, but have been availed of by municipalities, and rule 10, Chap. 66, Civil Accounts Code, shows that the Government of India have no objection to this privilege being extented to municipalities.

G. R. No. 635 of 24th Feb. 1893, Gen. Dep., negatived the proposal to make these rules also compulsory with municipalities; but agreed with the Commissioners in pointing out to municipalities the advantages of the rules, and the extreme desirability of municipalities that order valuable machinery or stores from Europe, always arranging with competent professional agents to order and pass them. The Engineer member of the Sanitary Board and other Executive Engineers who may be entrusted with the preparation or scrutiny of plants for municipal works, should see that the specifications of works always state the arrangements proposed for ordering and passing the stores from England.

2 **Property**—"Immovable property includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth." "'Movable property' means property of every description, except immoveable property." (Bombay General Clauses Act, sec. 3 (24) and (31))

3 **Contracts to be not inconsistent with the Act.**—As the section authorises a municipality to enter into all such contracts as may be necessary to carry out the provisions of the Act and so far as is not inconsistent with the provisions and purposes of the Act, it follows that any other contracts are prohiblted and would not therefore be binding on the corporation. See note 8.

"Corporations, which are creations of law, are, when their seal is properly affixed, bound just as individuals are by their own contracts and as much as all the members of a partnership would be by a contract on which all are concerned. But where a corporation is created by an Act of Parliament *for particular purposes*, with special powers, there indeed another question arises. Their deed though under their corporate seal, and that regularly affixed, does not bind them, if it appears by the express provisions of the statute creating the corporation, or by reasonable inference from its enactments, that the deed was *ultra vires*, that is, that the legislature meant that such a deed should not be made."—1 *Smith's Leading Cases* 351.

4 **Seven years.**—Compare with section 9 of the Bombay Local Board Act, 1884, which makes the period one of 3 years.

This term was extended from 3 to 7 years as it was said that such leases would be more frequently given by municipalities than by Local Boards, and would be under closer public observation.

There are precedents for this in England, where Local Government has prevailed for many years, and there a Municipal Council is not allowed to sell, mortgage or let out on a long lease, any of the borough lands without the sanction of the Treasury. Again in the English Public Health Act of 1875, which is a comprehensive Rural Local Board and District Municipal Act, the local authority cannot let lands for any term, except with the consent of the Local Government Board.

There is no obstacle to the lease being one in perpetuity.

5 **Commissioner's sanction.**—It was ruled by G. R. 4849 of 19th Dec. 1885, Gen. Dep., that this sanction should be given in writing by the Commissioner upon the application of the municipality and should be referred to by its date and number in the lease, or other instrument which is afterwards executed.

The Commissioner should decline to accord his sanction to any sale until the price and other terms are all before him. It appears also to be the intention of the law that sanction should be thus given by the Commissioner, as if he gives his sanction in anticipation of an auction, he cannot know what he is sanctioning.

"2. If it is desired to reserve the acceptance of the highest bid at an auction for the Managing Committee of the municipality, there should be no 'knocking down' or acceptance of the highest bid by the auctioneer at the time of the auction. He should merely announce that the bids will be placed before the Managing Committee for their consideration and decision; and in every case it should be made known at the auction that even if the highest bid be accepted by the Managing Committee, the sale can only be effected if it is sanctioned by the Commissioner." (G. R. 1624 of 18th May 1892, Gen. Dep.)

6 **Value of moveable property requiring sanction.**—Rs. 500 in the old Act was thought to be excessive in the case of small municipalities. In the Panjab Act it is not exceeding Rs. 500 for all municipalities, but in the N. W. P., C. P. and Madras Acts it is not exceeding Rs. 200.

7 **Mode of execution.**—Sub-sections (6) and (7) are taken from section 30, Bom. II of 1884, with some considerable alterations. Formerly the president could enter into any contract in such form and manner as according to the law would bind him if made in his own behalf, subject to a value limit of Rs. 500. All other contracts were to be in writing and signed by him and two Councillors, and sealed with the common seal.

In the Panjab Act, contracts in 1st class municipalities exceeding Rs. 100 and in 2nd class municipalities exceeding Rs. 50 must be in writing. In the Madras Act, all contracts exceeding Rs. 100 and in the N. W. P., and C. P. Acts exceeding Rs. 20 must be in writing.

Transfer of Government Securities.—The Advocate General having expressed the opinion that such a transfer not being a contract, it was necessary that the municipal seal should be affixed to each such transfer, G. R. 1942 of 16th May 1889, Fin. Dep. directed that municipalities should be invited to provide in the rules as to the affixing of the seal.

Affixing of the Municipal Seal.—See section 9 and notes. The Advocate General on this point says "The Act is silent as to the person by whom and the mode in which the common seal is to be affixed. It is one of these matters to which each municipality may make rules under section 32 (now 46). In the absence of such a rule, I think the municipality, or any committee thereof so empowered, must decide on each occasion who is to affix the common seal; the person so authorised should then affix the seal to the instrument in question, in this case the transfer of a Government Security, and authenticate the same by his signature."

See Rules 66, 110, 111 and 112 Orr's Model Rules.

By section 70 (2) of the Bombay City Act, "the common seal, which shall remain in the custody of the Municipal Secretary, shall not be affixed to any contract, or other instrument, except in the presence of 2 members of the standing committee, who shall attach their signatures to the contract or instrument in token that the same was sealed in their presence. The signatures of the said members should be distinct from the signatures of any witnesses to the execution of any such contract or instrument."

Contracts executed on behalf of Secretary of State with municipalities.—See Government of India Notification in Bombay Government Gazette of 4th April 1895, p. 397, Part I, as amended by Home Dep. No. 224-225 of 2nd Feb. 1908 (B. G. G., 5th March 1908, p. 265.) and No. 340-342 of 5th March 1909 (B. G. G., 11th March 1909, p. 408.)

Section 47 of the U. P. Act requires that every contract exceeding Rs 20 shall be in writing and shall be signed by the Chairman or Vice-Chairman and Secretary. Where a contract was endorsed on the back by the Vice-Chairman and Secretary and the endorsement referred to the contract and its confirmation: *Held* that this was a sufficient compliance with the requirements of the section. Refers to A. W. N. 1905, p. 111. (*Municipal Board of Najibabad* v. *Sheo Narain* (1907) 29 All. 346.)

8 **Contracts not made in accordance with Act are** *ab initio* **void.**—Contracts which are illegal as being *ultra vires* of the powers of a municipality are *ab initio* void and cannot be enforced. See 21 M. L. T. 788 and 790 noted sec. 59.

"Where a corporation is created by Statute, its powers are limited and circumscribed by the statute creating it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation. What the Statute does not expressly or impliedly authorise is to be taken to be prohibited. If, for instance, the subject matter of a contract is beyond the scope of the constitution of the corporation, it is *ultra vires*, that is, it is beyond the powers of the corporation to make the contract, which is therefore, void *ab initio* and cannot be rectified." (Halsbury's Laws of England, Part 8, Article 805.)

Contract not properly executed not binding.—Section 34 of the Bengal Act must be read along with sec. 37 of the said Act. Where in a suit by the Chairman of the municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding Rs. 500, but that the kabuliyat executed on behalf of the municipality was signed only by the Chairman, and although two of the Commissioners witnessed it, they did not sign it as contracting parties, as required by the Act, and furthermore, it was not sealed with the seal of the Commissioners:—*Held*, that the contract was not binding on the Commissioners. (*Chairman S. Barrackpure Municipality* v. *Amulya Nath Chatterjee*, I. L. R. (1907) 34 Cal. 1030.)

Contract not signed properly void against Municipality.—A contract purporting to be made by a municipality but not signed by the Chairman or, Vice-Chairman and a Councillor as required by section 45 of Act IV of 1884 is not binding on the municipality. I. L. R., 27 All., 592 followed. I. L. R 28 Bom., 66 does not refer to or consider the authorities on which the Allahabad case proceeded. Where the contract is not so signed, the municipality cannot be rendered liable on the ground of executed consideration. *Young & Co.* v. *The Mayor and Corporation of Royal Leamington Spa*, (L. R., 8 A. C. 517) followed. *Lawford* v. *The Billericay Rural Council* (L. R. (1903), I. K. B., 773) distinguished as there the local body was not governed by any statutory provision such as that in the Public Health Act, 1875, sec. 174. (*Ramaswamy Chetty* v. *The Municipal Council, Tanjore*, I. L. R. (1906) 29 Mad. 360.)

Contract voidable if not properly executed even if partly performed:—Where a contract with a Municipal Board, which, according to section 40 of Act No. XV of 1883 and section 47 of Local Act No. I of 1900 must be executed in a particular form, has not been so executed, no suit can be maintained against the Municipal Board in respect thereof, notwithstanding that there has been part performance of the contract and the plaintiff is claiming merely for the value of work done and of materials supplied. *Young and Co.* v *The Mayor and Corporation of Royal Leamington Spa* ((1883) L. R., 8 App. Cas. 517), and *British Insulated Wire Co.* v. *The Prescot Urban District Council* (L R., 1895, 2 Q. B. D., 463) followed. I. L. R. (1903) 28 Bom 66 *quoad hoc* dissented from. (*Radha Krishindas* v. *Municipal Board Benares*, (I. L. R. (1905) 27 All. 592.)

In a suit for damages for breach of an executory contract, it is open to the defendant to show that it is not binding on him in as much as it is not binding on the plaintiff, because the formalities prescribed by section 30 of the Bombay Act of 1884 (now section 40 (*b*)) have not been complied with. (*Ahmedabad Municipality* v. *Sulemanji* I. L. R. (1903) 27 Bombay 618.)

Note.—In this case the formalities had not gone beyond the sanction of the General Committee

Contract not properly made not binding.—The chairman of a municipality has no power to sell or lease any land of the municipality.

Where plaintiff took a settlement of a piece of land from the chairman, and built a house upon it, and 2 years after that he was allowed to construct a drain round the house. *Held* that this did not operate as an estoppel against the municipality, because plaintiff built his house before constructing the drain, and was not led to erect his house by the municipality's permission to make the drain.

Where plaintiff brought his suit for a declaration that the land on which he built the house was his and that the Magistrate's order, obtained by the municipality that the house should be demolished, should be withdrawn, *held* that the suit was rightly dismissed. (*Jagannath Saha* v. *Chairman Behrampur Municipality*, 9. C. L. T. 286; 1909, 4 Ind. Cas. 55.)

Defendant purchased at public auction the right of collecting tolls for 3 years. He entered on possession and collected tolls but did not execute the written agreement required by sec. 45 of the municipal Act. After about 17 month's of enjoyment, disputes having arisen, defendant was put out of possession, and a resale for the remainder of the term resulted in

loss to plaintiff, who then brought a suit for the loss and for arrears due. *Held* that the agreement was one to which sec. 45 applied, it was invalid and was not binding on either of the parties to it. I. L. R. 27 Bom. 618 followed. The fact that it had been partially acted upon, could not render it an operative contract in spite of the violation of the provisions of sec. 45.

The municipality could not go behind the agreement and treat the suit as one for money had and received. (*Raman Chetti* v. *Municipal Council of Kumbakonam*, I. L. R. (1907) 30 Mad. 290.)

9 **Sub-section (8).**—This was added by the Amending Act of 1914.

(7.) *Compulsory Acquisition of Land.*

41. When there is any hindrance to the permanent or temporary acquisition, upon payment, of any land or building[2] required for the purposes of this Act, the Governor in Council may, after obtaining possession of the same for Government under the Land Acquisition Act, 1894, or other existing law, vest such land or building in the municipality on their paying the[3] compensation awarded, and on their repaying to Government [4]all costs incurred by Government on account of the acquisition.

[1] Recourse to the Land Acquisition Act, 1894.

1 **Origin of section.**—This section is a reproduction of sec. 25 of Bom. VI of 1873, with the exception of the last sentence. By sec. 50 "every municipality may acquire and hold property * * * and shall hold and apply the same as trustees, subject to the provisions and for the purposes of the Act."

Private acquisition.—No formal agreement is necessary. (G. R. 11840 of 15th Dec. 1906 Rev. Dep.)

For rules and orders of Government under the Act, see Part II, Appendix, B.

Rules 5 and 6 of these rules may be observed in the cases of lands acquired by private negotiations outside the Act. (G. R. 8762 of 13th Dec. 1886, Rev. Dep.)

Where land is taken up under the Act for a municipality, it should be held liable for the revenue, but the municipality might be allowed to compound for it. Government of India Notifications Nos. 896 of 9th Dec. 1876, 446 of 12th Sep. 1879, G. R. Nos. 7432 of 15th Dec. 1876, 4390 of 2nd June 1884, 6650 of 12th Dec. 1879, 1860 of 29th Feb. 1884 and 2958 of 19th April 1886.

It would be a good thing if municipalities would purchase by private agreement land near railway stations which is in the occupation of individuals, especially when it may be in contemplation to construct roads. (G. R. 4875 of 2nd Dec. 1865.)

Acquisition under the Act.—The Governor in Council is pleased to direct that in all cases where it is desired to acquire land for public purposes the land shall be notified and the acquisition carried out in accordance with the provisions of the Land Acquisition Act. This procedure has the advantages (1) of shortening correspondence and negotiations, (2) of making certain of the land, and (3) of securing an indefeasible title. The notification under the Act need not in any way prevent or impede private negotiations; these can be proceeded with and, if agreement be arrived at, the price agreed can be awarded under the Act in the manner indicated in paragraph 3 of the letter from the Government of India, Public Works Department, Railways, No. 1780-R. C. dated 12th November 1904, embodied in the preamble of Government Resolution No. 1171, dated 11th February 1905 prescribing the procedure to be followed with regard to the acquisition of land required for Railways. If the price be not agreed upon by private negotiations, formal award can be passed under the Act. In either case the land will be acquired under the Act and the title of Government will be secured, which will not be the case if the acquisition be made by private negotiations only. (G. R. 7751 of 25 Sep. 1905 Rev. Dep.

These orders do not apply to acquisition of land by private negotiations by municipalities and Local Boards, but only when such negotiations fail and these bodies ask Government to acquire the lands on their behalf. However Local Boards would be well advised to adopt the course prescribed therein. (G. R. 3175 of 29th March 1906, Rev. Dep.)

Compulsory acquisition not compulsory.—It was suggested that as there was considerable risk of waste of public money under a system of amicable acquisition, especially in small

municipalities, it should be made incumbent on all local bodies to apply for acquisition under the L. A. Act as a general rule. Government, however, did not consider it desirable to withdraw from these bodies the discretion which they now had in the matter. (G. R. 6556 of 10th Sep. 1913, Gen. Dep.)

Acquired land liable to Govt. assessment even though originally exempt.—Plaintiff bought from the municipality land which was originally *inam* land and which had been acquired by Government under the Act and transferred to the municipality on payment of the amount assessed. Government collected from plaintiff ground rent for the said land in his occupation. Plaintiff then brought a suit for a refund and for a declaration that Government was not entitled to levy the same. *Held* that, even *inam* land which is subject only to a quit-rent, becomes, when acquired by Government under the Land Acquisition Act, ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier whether deriving his title directly from the Government or from a municipality which after such acquisition by the Government becomes owner under section 279 of the Madras District Municipalities Act (IV of 1884) by payment of the amount settled as compensation. Acquisition is only by the Government and not by the municipality, hence the previous inamdar's right to exemption from assessment does not rest in the municipality. A transferee from the municipality of such land cannot therefore claim as against the Government exemption from assessment. A person who claims exemption from the payment of such assessment as the Government may *fix*, must show some grant exempting him from the payment of the ordinary assessment. No exemption can be claimed without a grant or exemption in express words. Effect of G. O. No. 210, dated 20th February 1889, permitting Municipal Councils to transfer lands vested in them by sale, mortgage or otherwise, was not to exempt the transferees from ordinary assessment that might be imposed but was only to remove all objection to the transfer on the ground that the transferor is a municipal council (*Hanumaniu* v. *Secretary of State*, (1913) I. L. R., 36 Mad., 373.)

Municival discretion to acquire.—When the law gives a municipality the authority to exercise its own discretion as to what land should be acquired and what not, the Civil Court cannot interfere with the act which is protected by such authority, and the action of the municipality cannot be interfered with in the absence of any allegation or any evidence to show that the municipality in acquiring the land was not acting honestly or was plainly abusing the power conferred on it by sec. 92 of the Act. (*Ahmedabad Municipality* v. *Chumanlal*, (1908) 10 Bom. L. R. (Journal) 176.)

A municipality cannot be said to be acquiring land for public purposes if the purpose is to give the land to persons in lieu of compensation for other lands taken from them for a public purpose, say the widening of a public street.

2 **Required for the purposes of the Act.**—See note 1. Land, &c., can only be acquired for the purposes of the Act. A municipality is forbidden to apply its funds otherwise than as trustees for the purposes of the Act. The question therefore whether the acquisition is for such a purpose can be raised by suit in a Civil Court. Sec. 6 of the Land Acquisition Act, 1894, does not debar such a suit. Though the notification may declare the acquisition for one purpose, it is open to a municipality to show that that is not the only purpose or that the achievement of that purpose will render it possible to carry out avowed purposes of the Act. It is immaterial whether the land, &c., is in a public or private street. The Act provides for many purposes, for which such an acquisition can be made, and so long as it is for any of such purposes, the Civil Courts will not interfere with the discretion which the law vests in a municipality. All questions of relative necessity, advantage or facility are questions of municipal detail, and it is not within the province of a Civil Court to regulate these details. (*Ramchandra* vs. *Ahmedabad Municipality*. L. R. 2 Bom. 395, I. L. R. 24 Bom. 600.)

3 **Compensation payable.**—This is in accordance with section 50 of the Land Acquisition Act, 1894, which lays down that when the provisions of the Act are put into force for "a local authority" (that is a municipality), the charges incurred in the acquisition shall be defrayed by the municipality.

Payment how to be made.—In any case in which land is acquired for a municipality or other body financially independent of Government, the Local Government may direct that the payments, instead of being made and audited in the same manner as the ordinary payments of such body, shall be made and audited as if the land were being acquired for Government. If the Local Government issues such an order, the Collector or other officer who makes payments on account of the land acquired, shall draw funds from the Treasury and make payments in the manner laid down in these rules, using the forms prescribed, and shall render his accounts to the Civil Accountant General. The municipality or other body will pay the estimated cost of the compensation to the credit of Government in advance on such dates and in such instalments as the Local Government may direct, further payment to Government being required as soon as the Accountant General reports that the payments made exceed the amount received in advance. The Accountant General will deal with the accounts and

payments as prescribed in these rules, debiting the payments against the advances received from the municipality or other body.

(G. I. F. C. Reso. No. 2209-A, of 10th May 1895, as amended by No. 5498-A. of 10th December 1895, No. 3469-A, of 12th August 1896, 5253-A, of 12th December 1896, G. R. No. 4320, of 10th June 1895, No. 755, of 24th January 1896, No. 6950, of 4th September 1896, and No. 237, of 12th January 1897.) See further Appendix B. Part II.

4 **All costs incurred.**—The Governor in Council is pleased to direct that, in cases where special establishment is employed, the whole of the cost in connection with the acquisition of land for the construction of Local Fund roads should be borne by the Local Boards concerned. In small cases where land is acquired for municipalities and Local Boards and the operations are conducted by the ordinary staff without any extra establishment the charge on the local bodies should be the same as that for measurement work done on the application of private persons. (G. R. 6231 of 12th July 1910, Rev. Dep.)

(8) Liabilities of councillors, officers and servants.

42. Every councillor shall be personally liable for the misapplication of any fund to which he shall have been a party, or which shall have happened through, or been facilitated by, gross neglect of his duty as a councillor, and [2]may be sued for recovery of the moneys so misapplied [3]as if such moneys had been the property of Government:

[1]Councillors to be held responsible for misapplied funds.

provided that no councillor shall be personally liable in respect of any contract or agreement made, or for any expense incurred, by, or on behalf of, the municipality; the funds at the disposal of each municipality shall be liable for, and be charged with, all costs in respect of any such contract or agreement and all such expenses.

Municipal funds ordinarily liable for all costs and expenses incurred.

1 **Personal responsibility of Councillors.**—Sec. 50 provides that a municipality is to hold and apply property vested in them "as trustees for the purposes of the Act."

Plaintiff got a license to make certain bricks and paid his fee. Subsequently the vice-chairman gave him a notice that the license was without authority and plaintiff should remove the bricks. On his failing to do so the vice ordered the overseer to remove them and destroy the kiln. *Held* that the action was illegal, as under the Act (Ben. III of 1864) the only remedy was by a prosecution and fine.

Municipal Councillors and their servants incur no personal responsibility for what they do, so long as they act in the line of their duty. But if they do, or order to be done, that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action and cannot excuse themselves on the ground that they acted *bona fide*. (*Sunder Lal* vs. *Baillie*, 24 W. R., 287.)

As to liability of the municipality for exceeding or abusing its powers see note to sec. 54.

2 **Suit for mis-application.**—The Bom. High Court has held that any rate-payer may bring a suit for an injunction to prevent the mis-appropriation of municipal money.

See the case referred to in G. R. 5398, note 4 sec. 54.

"*As if such monies property of Government.*"—"A suit against the president of a municipality for monies lost to the municipal fund through his neglect, should be brought by the municipality as plaintiffs, as the funds misappropriated are the property of the municipality. (See sec. 51 of the Act). The difficulty created by the words "may be sued for the recovery of the moneys misapplied as if such moneys were the property of Government" may be got over by joining Government as plaintiffs with the municipality and praying that the money claimed from the defendant may be decreed to be paid by him to the plaintiffs or one of them. I read sec. 42 as giving a right of suit to Government but not as taking away from the municipality the right of suit incidental to its ownership of the fund. The

object of the provision, which also appears in the Act of 1873, was probably to enable Government to sue in cases where the members of the municipality through supineness or collusion failed to assert their rights against a defaulting member of their body." (The Advocate General's opinion. G. R. 5890 of 16 October 1901 G. D.)

The Panjab Act, sec. 39 and the C. P. Act, 28, provide that "a suit for compensation for the same may be instituted against him by the committee with the sanction of the Commissioner," &c.

43. (1) Any person who has, directly or indirectly, by himself or his partner, any share or interest in any contract with, by or on behalf of a municipality, or in any employment with, under, by or on behalf of a municipality, other than as a municipal officer or servant, shall be disqualified for being an officer or servant of such municipality.

[1]Officer or servant of any municipality not to be interested in any contract with such municipality.

(2) Any municipal officer or servant who shall acquire, directly or indirectly, by himself or his partner, any share or interest in any such contract or employment as aforesaid, shall cease to be a municipal officer or servant, and his office shall become vacant.

Effect of acquiring such interest.

(3) Nothing in this section shall apply to any such share or interest in any contract or employment with, under, by or on behalf of a municipality as under clauses (ii) and (iv) of the proviso to sub-section (1) of section 15, it is permissible for a person to have without his being thereby disqualified for being a councillor.

Saving clause.

1 **Municipal servants and contracts.**—This is taken from the section 86 of the Bom. City Act.

The old Acts did not provide for disqualification or loss of office, but only for punishment which is now provided for by the next section.

The marginal note should strictly be "Persons having interest in contract with municipality disqualified for being servants of such municipality," and the other marginal note should be "Effect of officer or servant acquiring such interest."

44. (*a*) Any councillor, who knowingly acquires, directly or indirectly, any share or interest in any contract or employment with, under, by or on behalf of a municipality of which he is a member, not being a share or interest such as, under section 15, it is permissible for a person to have, without being thereby disqualified for being a councillor, and

[1]Penalty for councillor, officer or servant of a municipality being interested in any contract, &c., with that municipality.

(*b*) any municipal officer or servant who knowingly acquires, directly or indirectly, any share or interest in any contract, or except in so far as concerns his own employment as municipal officer or servant, in any employment, with, under, by or on behalf of a municipality of which he is an officer or servant, not being a share or interest such as under [2]clauses (ii) and (iv) of the proviso to sub-section (1) of section 15, it is permissible for a

person to have without being thereby disqualified for being a councillor,

[3]shall be liable, on conviction before a criminal Court, to a [4]fine which may extend to five hundred rupees.

1 **Penalty for having an interest.**—This is taken from the first part of sec. 45 of Bom. II of 1884, but worded somewhat differently.

Under the Panjab Act any member, officer or servant being interested in a contract, without the permission in writing of the Commissioner, is to be deemed to have committed an offence under sec. 168, Ind. Penal Code, which relates to public servants unlawfully engaging in trade.

Under the English Act though he may not take part in any such matter before the council, no penalty is imposed in the event of his doing so and the council has no power to remove him. (*Reg* v. *Ride Corporation* (1873) 37 J. P. 725; *Murray* v. *Epsom Local Board*, (1897) 1 Ch. 35.)

2 **Exempted interests.**—The Bill included also clause (i), but this was afterwards omitted. Then it was suggested that no municipal officer or servant should be allowed to acquire such interest in land without the previous sanction of the municipality; and in respect to clauses (ii) and (iv) every such officer or servant having such share or interest should be bound to disclose it to the municipality, or otherwise he should be liable to the penalty. Neither of these suggestions have been adopted.

3 **Shall be liable.**—The following is a ruling on these same words in sec. 48 of the old Act, Bom. VI of 1873:—

"This section does not absolutely require the infliction of a penalty. Its language is different from that of most of the penal clauses of the Indian Penal Code. An offence against this section is only "liable" to a penalty. It is not compulsory on the Court to inflict a penalty in every case in which the law is broken." (Sadar Court Sind Criminal Appeal No. 18 of 1882.)

4 **Fine.**—This offence is triable by any Magistrate, it is bailable, a summons should ordinarily issue in the first instance, and is not cognizable, *i. e.*, the police cannot arrest the offender without a warrant from the Magistrate (*Vide* end of Schedule II of the Criminal Procedure Code, 1898.)

Government sanction necessary, before any such prosecution can be instituted whether by the municipality or any one else except Government see note sec. 45. The prosecution is subject to the limitation prescribed by sec. 161.

Provided there is Government sanction no sanction by the municipality is necessary for a prosecution instituted by other than the municipality. (G. R. 752 of 9th March 1888.)

Councillor, lending money to contractor with municipality.—A member of a Municipal Board in Berar, who lends money to a contractor, upon the personal credit of such contractor, for the purpose of a contract with the Municipal Board violates section 146 (1) of the Berar Municipal Act and is liable to punishment under section 168 of the Penal Code.

In a municipal contract, in the name of B, which is entirely worked with the money of A, B is merely the benaimdler of A.

A, the Vice-Chairman of a Municipal Board, had authority to enter into contracts for the municipality, to pass contractors' bills and to issue cheques in payment thereof. A gave two contracts for the constructions of municipal drains to B. B, had no capital to carry out these works so A, who carried on a money-lending business on his own behalf, advanced the money and re-paid himself out of the realizations of municipal cheques issued by himself.

Held, that A had a pecuniary interest in the contracts within the meaning of section 146 (1) of the Berar Municipal Act and was guilty of an offence under section 168 of the Penal Code as applied to Berar. *Todd* v. *Robinson*, (1885) 54 L. J., Q. B. 47; 14 Q. B. D. 739; 52 L. T. 120: 49 J. P. 278; *Nicholson* v. *Fields* (1862) 31 L. J Ex. 233; 7 H, and N. 810; 10 W. R. 304; *Lewis* v. *Carr* (1877) 46 L. J. Ex. 314; 1 Ex. D. 484, 36 L. T. 44; 24 W. R. 940; *Nell* v. *Longbottom* (1894) 63 L. J. Q. B. 490; 1 Q. B. 767; 10 R. 193; 70 L. T. 499 *and City of London Electric Lighting Co.* v. *London Corporation* (1903) A. C. 434; 72 L. J. Ch. 737; 89 L. T. 310; 52 W. R. 158: 67 J. P. 437, 2 L. G. R. 93, relied upon. *Le Fuvre* v. *Lankester* (1854) 23 L. J. Q. B. 254; 3 E. 1 and B. 1 530; 2 C. L. R. 1426; 18 Jur. 894: 12 W. R. 307 distinguished. (*A. B.* v. *Emperor*, 7 N. L. R. 53; 1910, 10 Tud. Cas. 577.)

45. (*a*) Every person holding the post of councillor or of an efficer or servant of a municipality, and every person authorised by the municipality to collect or recover on behalf of the municipality any tax, who

[1]Penalties imposed by the Indian Penal Code.

(*i*) accepts or obtains, or agrees to accept, or attempts to obtain for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or dis-service to any person, with the municipality or with any public servant, or with any municipal committee, officer or servant, as such, or with Government, or

(*ii*) does any act for which, or omits to do any act for the omission of which, if he were a public servant within the meaning of the Indian Penal Code, he would be liable to punishment, or to an enhanced punishment, under that Code; and

(*b*) every person who

(*i*) falsely pretends that he holds such post or is so authorised as aforesaid, and in such assumed character, does or attempts to do any act under colour of the character so assumed, or

(*ii*) does any such act or is guilty of any such omission, to or in relation to, any person holding such post or authorised as aforesaid with such intention or knowledge or in such circumstances as would, if the person holding such post or authorised as aforesaid were a public servant within the meaning of the Indian Penal Code, render the person so doing that act or so omitting as aforesaid, liable to punishment or enhanced punishment under that Code,

shall, if no punishment is, in such behalf, provided elsewhere in this Act, [2]be liable to the punishment to which for the like offence he would, if every person holding such post or authorised as aforesaid were[3] a public servant within the meaning of the Indian Penal Code, be liable under that Code.

1 **Councillors and municipal servants when punishable as public servants.**—Section 46 of Bombay II of 1884 simply provided that such person "shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code;" but the Government of India preferred the present form of declaring what being a public servant meant.

The Madras Act, section 10-B, provides a fine of Rs. 100 for a voter accepting a bribe to vote and a fine of Rs. 200 to the person offering the bribe.

The penalty under this section would be in addition to any disqualification ordered by the District Court under section 22 (6).

This section does away with all questions as to when, for the purposes of the offences referred to, a municipal officer, &c., is a public servant. Now not only is every such person punishable under the Penal Code for the acts here specified as if he were a public servant even though he may not come within the definition of a public servant as stated in section 21 of that Code, (*Emp.* v. *Ezekiel* 6 Bom. L. R. 54,) but all other persons who so personate councillors or municipal officers, &c., are also so punishable.

2 **Liability to punishment.**—See note 3, section 44.

3 **Public servant.**—Though now it is not necessary to decide who are such for the purposes of the section, that is punishment for certain offences committed by councillors and municipal officers and servants, still it is necessary to know which of these persons are 'public servants' within the meaning of the Penal Code for the purpose of sanction for their prosecution and also for offences which may be committed against them by other persons in contempt of the lawful authority of public servants.

Section 21, clause 102, Indian Penal Code, provides "every officer whose duty it is, as such officer to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district, is a public servant."

"Illustration. A municipal commissioner is a public servant."

In the case of *Reg.* v. *Nantamram Uttamram* (VI Bom. H. C. R. C. C. 64) it was held that an engineer who receives and pays to others municipal money, is a public servant within the meaning of section 21, clause 102 of the Indian Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.

A municipal committee is not a "public servant" and therefore it may be prosecuted without the sanction of Government (*Empress* v. *Municipal Committee of Calcutta*, I. L. R. 3, Cal. 758, 2 C. L. R., 520.)

Labourers or menial servants employed on account of Government are not public servants. (*Queen* v. *Nachimuttu*, I. L. R. 7, Mad. 18.)

Sanction necessary for prosecution of a Councillor :—"When any public servant not removeable from his office without the sanction of the Government of India or the Local Government, is accused as such public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government or of some Court or other authority to which such public servant is subordinate and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, the offence or offences for which, and the manner in which, the prosecution of such public servant is to be conducted, and may specify the Court before which the trial is to be held (Criminal Procedure Code, section 197).

As a councillor is a public servant and is now by section 16, removal from office only by Government, this section 197 applies.

This applies also to a Municipal Commissioner, Chief Officer, Health Officer or Engineer.

Sanction not necessary in other cases.—It was suggested that following section 197, Criminal Procedure Code, sanction should be necessary before any municipal officer or servant is prosecuted. It seems, however, very doubtful whether, beyond the provision already referred to, any advantage would accrue from such a provision. In the first place no serious case is likely to be taken up, except after very full discussion by the municipality, while, in cases of emergency it might be necessary for the President to lay an information before a Magistrate *at once*. Petty offences by inferior servants could easily be prosecuted by their immediate superiors.

As to who may prosecute, &c., see notes to section 161.

Offences committed against the person or property of individuals, by one who happens to be a public servant, do not require sanction.

Sanction to prosecute public servant when unnecessary.—"Under section 341 of the City of Madras Municipal Act, any person bringing or causing to be brought timber within the City without a license obtained on payment of a fee, is liable to a fine. The Superintendent of the Gun Carriage Factory in Madras, who is an officer holding a commission in the Royal Artillery,

brought or caused to be brought timber within the aforesaid limits without license. On a complaint being lodged against him under the section, it was contended that he was a public servant within the meaning of section 197 of the Code of Criminal Procedure and that the Court could not take cognizance of the offence inasmuch as the sanction referred to in section 197 had not been obtained—*Held*, that sanction was not necessary, as the offence charged was not one which could be committed only by a public servant, nor did it involve as one of its elements that it had been committed by a public servant. *Nando Lal Basak* vs. *Mitter* (I. L. R., 26 Cal., 852) followed." (*The Municipal Commissioners for the City of Madras* vs. *Major Bell*. I. L. R., 25 Mad., 15.)

It was held in *Corporation of Calcutta* vs. *Administrator General of Bengal* (I. L. R. 30 Cal. 927, following the case of *Nando Lal Basak* vs. *N. N. Mitter* I. L. R. 26 Cal. 852) that where the Administrator General was charged with a municipal offence committed by him in his capacity of administrator to the estate of the deceased to whom the premises belonged, sanction of Government to his prosecution was not necessary. The Court also referred to I. L. R. 25 Mad. 15.

See note to sec. 3 (8) as to the ruling in I. L. R. 30 Cal. 721 regarding a receiver appointed by the High Court.

Sanction necessary in certain other cases :—See Chapter X of the Indian Penal Code for offences relating to contempts of the lawful authority of public servants. Sanction for the prosecution of such offenders is required by section 195 (*a*), Criminal Procedure Code, 1882.

Municipal servant when exercises public function :—*Held*, that a municipal servant cannot be considered to be discharging a public function in putting down pegs and strings, in order to mark out a road, unless the road is public property vested in the municipality.

Held, further, that a person between whom and the municipality there is a *bona fide* dispute as to the ownership of the road, commits no offence under section 186 of the Indian Penal Code, if he pulls up the pegs and cuts the strings in asserting of his right. (*Imp.* vs. *Sagoon Vasudev Bangle and another*, Bom. H. C. Criminal Ruling No. 13 of 5th April 1888.)

CHAPTER IV.—RULES AND BY-LAWS.*

46. Every municipality shall, as soon as conveniently may be after the constitution thereof and subject to the provisions of chapter XIII A, make and may from time to time [2]alter or rescind rules, but not so as to render them [3]inconsistent with this Act,

[1]Municipalities to make rules:

(*a*) regulating the conduct of their business and the [5]delegation of any of their powers or duties and, subject to the provisions of section 27, the appointment and constitution of committees;

[4]regulating the conduct of business;

[6]provided that, in the case of City Municipalities, the approval may be given by the Commissioner, instead of by Government, in respect of rules framed under clause *b* (ii), subject to the condition that any such rules relating to Chief Officers, Health Officers or Engineers, or to the salaries, fees or absentee or other allowances of such officers shall require the sanction of Government.

(*b*) determining

fixing the functions of the president and the establishment;

(i) the executive functions to be performed by the president, vice-president, the chairman of any committee, and, subject to the provisions of Chapter XIII, in City Municipalities by the

Chief Officer, and, subject to the provisions of chapter XIII A, by the Municipal Commissioner, and the delegation of any of their powers or duties to such persons:

[7](ii) the staff of officers and servants to be employed by the municipality and the respective designations, duties, salaries, fees and absentee or other allowances of such officers and servants, and the powers and duties delegated to them under section 37;

for general guidance of municipal servants;

[8](*c*) generally for the guidance of their officers and servants in all matters relating to the municipal administration;

fixing the amount of the security to be furnished;

[9](*d*) fixing the amount and nature of the security to be furnished by any officer or servant from whom it may be deemed expedient to require security;

[10]determining mode of appointing, &c., municipal servants;

[12]delegating power to appoint, &c.;

(*e*) subject to the provisions of section 184, determining the mode and conditions of appointing, punishing or dismissing any [11][such] officer or servant, and delegating to officers designated in the rules the power to appoint, fine, reduce, suspend or dismiss any [such] officer or servant;

granting leave to municipal servants;

[13](*f*) regulating the grant of leave to officers or servants, and fixing the remuneration to be paid to the persons, if any, appointed to act for them whilst on leave;

fixing pensions, &c.;

[14](*g*) regulating the period of service of all officers and servants, and determining the conditions under which such officers and servants, or any of them, shall receive pensions, [15]gratuities or compassionate allowances on retirement, or on their becoming disabled through the execution of their duty, and the amount of such pensions, gratuities or compassionate allowances; and prescribing the conditions under which any [16]gratuities or compassionate allowances may be paid to the surviving relatives of any such officers or servants whose death has been caused through the execution of their duty;

contributing to provident funds;

[17](*h*) authorising the payment of contributions, at such rates and subject to such conditions as may be prescribed in such rules, to any pension or provident fund which may be established by the municipality or with the approval of the municipality, by the said officers and servants;

[18](*i*) prescribing, subject to the provisions of Chapter VII, the taxes to be levied in the municipal district for municipal purposes, the grounds on which [19]exemptions are to be recognised, the conditions on which and the extent to which remissions may be granted, and the system on which refunds are to be allowed and paid, in respect of such taxes, and the limits of the charges or payments to be fixed in lieu of any tax under section 71, and the [20]fees to be charged for licenses or permissions granted under section 70, and the times at which and the mode in which the same shall be levied or recovered or shall be payable, and prescribing the fees for notices demanding payments due on account of any tax, and for the execution of warrants of distress, and the rates to be charged for maintaining any live-stock distrained, and designating the persons authorised to receive payment of any sums so leviable;

prescribing the taxes, &c., to be levied for municipal purposes;

[21](*j*) prescribing the conditions subject to which sums due on account of any tax or of costs in recovering any tax may be written off as irrecoverable, and the conditions subject to which the whole or any part of any fee chargeable for distress may be remitted by the managing committee:

for writing off amounts due and remitting fees.

provided that—

[22](*a*) No rule made, or alteration or rescission of a rule made, under this section shall have effect unless and until it has been approved, in the case of City Municipalities, by the [23]Governor in Council, or in other cases by the Commissioner.

Approval required to rules.

(*b*) If an officer serving or having served under a municipality has been or is transferred from or to the service of the Government, or is partly employed by the Government and partly by a municipality, the municipality shall contribute to his pension and leave allowances to the extent required by the rules in force for the time being, made by the Governor-General in Council in this behalf.

[24]Proviso as to officers transferred from, or to the service of Government.

(*c*) The municipality shall not, unless with the assent of Government, dispense with the services of any such officer transferred from the service of Government to the service of the municipality or employed partly by Government and partly by the municipality, or finally dismiss from the service of the municipality any officer transferred from the service of the municipality to the service of Government, without giving Government six months' previous notice.

[24]Notice required in certain cases of dismissal.

* **Rules and By-Laws.**—The Bombay High Court and Government should be supplied with copies of all by-laws, rules and regulations framed by, or in force in, the municipalities throughout the Presidency. (G. R. 274 of 18th Jan. 1890, Gen. Dep.)

Manuscript copies may be sub-mitted, if no printed copies are available. (G. R. 2070 of 27th May 1890, Gen. Dep.)

Copies of all by-laws, rules, regulation, octroi schedules and taxation rules should be furnished to the Remembrancer of Legal Affairs. (G. R. 1510 of 31st March 1896, No. 2044 of 5th May 1896, (Gen. Dep.)

All existing "rules and by-laws shall, so far as may be, be deemed to have been made, &c., under this Act." *Vide* sec. 2 (1) (*b*).

"*Publication.*—Rules do not require under this Act to be published for the information of persons interested before being brought into force, except those under clause (*i*) prescribing taxes, &c., and as to which see sec. 60 (6).

All by-laws require publication, sec. 48 (2). The reason for this is that rules, except as to taxes, do not lay any obligation on the public, whereas by-laws do, and their breach is punishable.

1 **Origin of section.**—This section is a re-enactment of section 32 of the old Act, with some alterations to be noted in each place.

Two alterations have been made by the insertion of the words "and subject to the provisions of Chapter XIII A" in the first part of this section, and the same words with the addition of "by the Municipal Commissioner" in clause (*b*) (*i*), by the Amending Act of 1914.

See the compilation of "Orr's Model Rules and By-Laws" published by and obtainable from the Manager, Government Central Press, Bombay, at the cost of Re. 1 per copy. Vernacular translations are also obtainable from the Press.

2 **Alter or rescind.**—The power to make regulations includes the "power exercisable in the like manner and subject to the like sanction and condition (if any) to add to, amend, vary or rescind them." (Bom. Gen. Clauses Act 1904, section 21.)

3 **Not inconsistent with Act.**—It is clearly beyond the province of a municipality to frame rules to regulate the appointment or removal of members of its own body. (G. R. 634 of 3rd March 1871.)

The Bombay High Court has ruled that the power given to municipalities to make rules cannot warrant the making of rules inconsistent with the Act, even though they may be sanctioned by the Executive Government (*Reg.* v. *Venku Bapooji* and others, Bom. H. C. R., 4th October 1871.)

Under the Madras and N.-W. P. Acts, the municipality are to make rules consistent with the rules made by Government under the Act.

If the rules are inconsistent the Civil Courts will interfere in suits by persons who are injuriously affected thereby.

4 **Regulating conduct of business.**—There is no need to call upon the Remembrancer of Legal Affairs to draft rules for the conduct of its business by a Municipal Board. The Board can frame its own rules under this section. (G. R. 558 of 17th Feb. 1885, Gen. Dep.) See Orr's Model Rules Chapter II.

5 **Delegation of powers.**—The corresponding clause under the old Act ran "and the delegation of any of its powers or duties to one or more committees." The delegation may now be to individuals also, see clauses (*b*) and (*e*) and section 37.

The rules should establish, as this section appears to intend, a constitutional limit to future delegation. There are certain powers which must necessarily require to be retained by the municipality as a whole.

Section 32 (*a*) requires rules to regulate, not the power in each case delegated, but the delegation of powers, *i. e.*, to lay down the general principles each municipality shall observe in the conduct of that business and not the instructions it may give from time to time. The rules are required not as a delegation of the powers and duties, but to regulate the delegation, and the delegation is to be made not by the rules, but only in accordance with the rules.

This section couples the delegation of powers and duties with the conduct of business and the inference according to ordinary rules of interpretation is that rules under that provision were to regulate the municipality in its exercise of the power of delegation just as it would regulate by rules the conduct of any other business. Such rules are required to prevent the accumulation of power in the hands of a clique, to prevent the nominees of a minority obtaining the entire executive control, &c. As in a deed of partnership, or in articles of association, provision should be made, not so much for each individual act of instruction to be

given to the agents employed, as to guard against the instructions being given without the consent of all, or of a fair representative proportion, of those interested. (Legal Rem. opinion quoted G. R. 734 of 14th Feb. 1890, Gen. Dep.)

See further G. R. 8262 of 30th Oct. 1889 setting out the opinion of the Remembrancer of Legal Affairs on the question of delegation under the old Act. *Vide* Compilation of Standing Orders of Government in the Revenue Department. Part XV. Lands and Land Revenue, pages 1193-1198.

6 **Proviso.**—This was inserted by Bombay Act III of 1915.

7 **Staff of officers and servants.**—See Orr's Model Rules, Chapter III. Subject to these rules, the president is to dispose of all questions relating to the service, pay, privileges and allowances of all officers and servants of the municipality. (Sec. 24 clause (*c*).)

Letter from the Remembrancer of Legal Affairs, quoted G. R. 1009 of 11th March 1889, Gen Dep.:—

"5. The duties and powers of the municipality imposed and conferred by the Act, do not render it obligatory on them to make appointments. It is no where provided, so far as I can see, in either Act, that the municipality should engage, punish or dismiss their employés. Such a provision is made in the District Local Board Act, (Bombay I of 1884, sections 38 and 40), and is subjected to regulation by Government under section 69 of that Act.

"Municipalities are not required to engage or appoint individuals. They are required and empowered by section 32 (*b*) and (*c*) of Bombay II of 1884, (now (*b*) (ii) and (*e*)), to determine what the staff shall be, to fix their designations, duties, salaries, fees and allowances, and to determine the mode of appointment, &c.

"It is not their duty to make, nor is their power restricted to the making of appointments in each individual case.

"They must fix the limits of their establishment and are responsible for its adaptation to their financial condition and for the rules by which appointments, punishments and dismissals are regulated. Their power to prescribe rules for the making of appointments, &c., is not fettered by any restrictions as to mode of appointment, &c., they may prescribe, beyond such as may arise from the necessity of obtaining the approval of Government.

"6. In determining by rules the mode of making, appointing, &c., an officer or servant, therefore, they are exercising their powers and not delegating them.

"7. It is part of the President's duties to dispose of *all* questions relating to the service of municipal servants, subject to the rules of the municipality, and it is for Government to determine in each case what limitations should be set.

"8. I may note that the Legislature evidently contemplated that the power to delegate patronage and control over the establishment might be more safely vested in a municipality than in a District Local Board, probably having regard to the more extensive interests and operations which it is the duty of the latter to supervise."

On the question being raised as to whether sanction was necessary to every new appointment and every increase of salary, since the procedure, making a reference to the Collector in every case, however small the post or salary, was unnecessarily cumbersome, (experience showing that intervention was rarely necessary), G R. 568 of 29th January 1901, Gen. Dep., stated:—His Excellency the Governor in Council is of opinion that it is desirable that as hitherto all rules should, before acquiring validity, have the sanction of higher authority.

Alteration in the staff, their salaries, &c.—If a municipality desires to alter its staff, the designations, duties, salaries, &c., the only way it can do so, irrespection of an order by the Commissioner under sec. 176, is by making a new rule and obtaining the necessary sanction of Government.

This section is not inconsistent with, but is limited by, section 176. If the Commissioner gives an order for a reduction, it must be carried out at once without regard to any pre-existing rule, which becomes *pro tanto* void so far as it may be inconsistent with the order. (G. R. 5189 of 2nd Oct. 1903, Gen. Dep. See also note sec. 176.)

Apparently also no extra remuneration for increased work could be given except by an increase in pay. Unless perhaps in the shape of a gratuity in accordance with rules under clause (3).

Alterations, additions, &c., to Staff.—As there can be no change of the establishment except with the sanction of Government (*vide* proviso (*a*)) G. R. 10219 of 17th Dec. 1914 G. D. authorises Commissioners to grant provisional sanction to the entertainment by city municipalities of temporary establishments, monthly statements of tabulated cases being sent up to Government for approval.

See note 6 to sec. 24 on the question whether by its rules a municipality can limit the Presidents power of granting leave.

Government pensioners.—As to their re-employment by municipalities see the Civil Service Regulations, Articles 466 and 520. G. R. 6823 of 20th Nov. 1906 Gen. Dep. give some instances.

Income-Tax.—All salaries, annuities, pensions, gratuities payable under this Act come within the definition of income in section 3, clause (c) of the Income Tax Act, 1886 (11 of 1886), and as such are liable to tax under that Act. British subjects residing within a Foreign State in India or in alliance with His Majesty and paid from Local Funds are liable to the tax (G. R. 2054 of 9th April 1886, Pol. Dep.)

Court expenses.—If a municipality considers that on the analogy of Government arrangements for payment of expenses to its servants on occassions when they attend Courts as jurors, &c., its servants are entitled to something more than the Court allows, it can pay them. But Government cannot admit its liability for any extra payment to servants of municipalities more than any other section of the public. (G. R. 2056 of 2nd April 1887, Jud. Dep.)

Powers under Abkari Act.—All Municipal Executive officers appointed under the municipal Acts, in receipt of a salary not less than Rs. 10 per mensem and being on the permanent establishment are invested with powers under section 37 of the Bombay Abkari Act, 1878, in addition to the powers and duties incident to their respective principal offices. (Govt. Notifn. No. 6700 of 27th September 1882.)

8 **Rules for general guidance.**—See Orr's Model Rules, Chapter IV.

Forms of accounts and notices.—It is open to every municipality under this clause to pass rules that their accounts shall be kept and their notices framed according to the forms which have been prepared by Government and have been approved for general adoption so as to ensure uniformity in the accounts of the municipality. Rules to this effect will receive the sanction of Government. The forms may be printed at the Government Central Press, and supplied to municipalities on indent, the cost being recovered as the cost of Local Fund forms (G. R. 2609 of 12th July 1882, Gen. Dep.)

Model rules and forms of account, &c.—See the draft rules circulated with G. R. 4790 of 10th Sep. 1909 G. D. as to procedure by municipalities in the methods of keeping the accounts, receiving and paying money, collecting and watching certain receipts, and controlling certain forms of expenditure.

It was ruled that municipalities should be left full liberty to determine in consultation with the Accountant General, how far they would adopt these rules and forms. (See also notes to sec. (169).)

Copies of documents.—The Advocate-General states that he sees nothing illegal or improper in a municipality furnishing copies of such of its documents as the public or any member of the public has a right or may reasonably be allowed to inspect, and making a fair charge for the same; and adds that in his opinion the municipality may fix such fees by rules under this clause, and that fees so fixed may properly be called legal fees. (G. R. 3654 of 4th September 1889, Gen. Dep.)

Municipal records are public documents within the meaning of section 74 of the Indian Evidence Act, and by section 76 of that Act any person who has a right to inspect any such document may demand, on payment of the legal fees therefor, a certified copy of the same from the public officer who has charge of the document.

Sections (9), 26, 49, 64, 65 (5) of this Act give to the public the right of inspecting certain municipal records and it follows therefore from section 76 of the Evidence Act that the public have a right to demand certified copies of the same. The legal fees for such copies would be fees prescribed by the municipality to whom the records belong. It is competent to every municipality to prescribe such fees in the rules and also to make rules for regulating the grant of copies of documents in their charge or control which the public have not a right to inspect. (G. R. 1579 of 13th May 1884, Gen. Dep.)

Application for copy order, liable to Court Fee stamp.—An application or petition when presented to any Board or Executive Officer for the purpose of obtaining a copy or translation of any order passed by the Board or officer, or of any other documents on record in such office, is liable to a Court fee stamp of one anna. (Court Fee's Act, 1870, Schedule II, Article I (a).)

Copying fees.—Copies must therefore be furnished on application, and copying fees may be charged and amount fixed by rules under sec. 46 (c).

Certified copies liable to stamp duty.—"*Held*, that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a ture copy by the Secretary to the Board, came within Article 22, Schedule I, Indian Stamp Act, 1879, and so required

a stamp of 8 annas. The Secretary of a Municipal Board is a public officer within the meaning of the said Article for the purposes indicated therein. (Reference under sec. 46, Act No. I of 1879 (1897), I. L. R. 19, All. 293.)

The Govt. of India are of opinion that when certified copies of municipal records are required, they should be stamped; but that there is nothing that need prevent the issue by the Secretary of a municipality of uncertified and unstamped copies of such records when required for private use. (G. R. 2768 of 27th April 1898, Rev. Dep.)

List of records to be preserved or destroyed.—Municipalities may also frame rules showing what papers are to be preserved or destroyed and the period of preservation in case of the latter. (G. R. 1540 of 10th April 1899, Gen. Dep.) For model list of documents to be (1) preserved, and (2) to be destroyed, see Part II Appendix E.

9 **Security.**—See Orr's Model Rules, Chapter V. The provision in a bond for forfeiture of the amount deposited as earnest money or security for due fulfilment of a contract is a contract within the exception to sec. 74 Indian Contract Act, and the whole sum mentioned as penalty is payable. (*Rajaram Rao* vs. *District Board, Tanjore*, 1 M. W. N. 686; 1910, 8 Ind. Cas. 565.)

DRAFT SECURITY BOND TO BE TAKEN FROM MUNICIPAL SERVANTS.

Approved of by G. R. 2500 of 5th June 1896, Gen. Dep.

A.

Whereas I A. B. son of by caste inhabitant of have been appointed to the office of to the municipality of and have been called upon in accordance with No. of the Rules made by the said municipality under clause (*g*) of section 32 of the Bombay District Municipal Act Amendment Act 1884 to furnish security of such amount and nature as is hereinafter specified for the due discharge of the trusts of the said office and of any other office under the said municipality to which I may be hereafter at any time appointed and for the due account of all moneys, papers and other property which shall come into my possession custody management or control by reason or in virtue of any such office I do hereby bind myself to pay and make good to the said municipality of the amount of any loss or defalcation in my accounts and of all moneys entrusted to my possession custody management or control and not disposed of by me in accordance with the duties imposed on me in respect thereof in any such office as aforesaid and to preserve from loss and damage all papers and other property so entrusted as aforesaid and to deliver up the same within such time and to such person as shall be demanded or ordered by the President for the time being or by the Vice-President for the time being of the said municipality by notice in writing left at my office or at my place of residence or delivered to me in person and in case of my making any default therein I hereby bind myself my heirs and legal representatives to forfeit to the said municipality the sum of Rupees (in figures) Rupees (in words).

Dated this day of 1 .

(Signature).

FORM OF SECURITY TO BE SUBJOINED TO THE BOND OF THE PRINCIPAL.

A.

I C. D. son of by caste and by occupation and inhabitant of (or we C. D. son of &c. and E. F. son of &c.) hereby declare $\frac{\text{myself}}{\text{ourselves}}$ $\frac{\text{surety}}{\text{sureties}}$ for the above A. B. that he shall do and perform all that he has above undertaken to do and perform and in case of his making any default therein $\left\{\begin{array}{c}\text{In the said C. D.}\\ \text{we the said C. D. and E. F.}\end{array}\right\}$ hereby bind $\frac{\text{myself my}}{\text{ourselves our}}$ heirs and legal representatives (jointly* and each of us binds himself, his heirs and legal representatives severally) to forfeit to the municipality of the sum of Rupees (in figures) Rupees (in words) or such smaller sum if any as shall be deemed by the for the time being of the said municipality sufficient to cover any loss or damage which the said municipality may sustain by reason of such default and $\frac{\text{I}}{\text{We}}$ do hereby further agree that no intimation of withdrawal from the contract of continuing guarantee by which $\frac{\text{I}}{\text{We}}$ have herein before bound $\frac{\text{myself}}{\text{ourselves}}$ shall have or be deemed to have any effect to revoke as to future transaction the continuance of the same until the expiry of sixty days from the date on which a notice in writing of an intention to make such revocation shall have been received by the of the said municipality.

*To be inserted if there be more sureties than one.

Dated (Signature.)

(ALTERNATIVE DRAFT).

B.

Know all men by these presents that we A B son of by caste and inhabitant of and C. D. son of by caste by occupation and inhabitant of are jointly and severally bound to the Municipality of in Rupees (figures) Rupees (words) to be paid to the President for the time being of the said Municipality on behalf of the said Municipality. For which payment to be made we bind ourselves and each of us in the whole our and each of our heirs executors and administrators jointly and severally by these presents.

Dated this day of 1

And whereas the said A. B. has been appointed to the office of on the establishment of the Municipality of and has in accordance with No of the Rules made by the said Municipality unnder Clause (*g*) of Section 32 of the Bombay District Municial Act Amendment Act 1884 been called upon to furnish security of such amount and nature as is contained in these presents for the due account by him of all moneys, papers and other property which shall come into his possession custody, management or control by reason or by virtue of such office or of any office to which he may at any time hereafter be appointed by or on the establishment of the said Municipality.

Now the condition of this obligation is such that if the said A. B. above bounden shall duly account for all and every sum of money which shall come into his possession custody management or control by reason or by virtue of any office which he now holds or to which he may hereafter be appointed as aforesaid and shall at all times preserve from loss and damage all papers and other property entrusted to him in connection with any such office and shall deliver up the same within such time and to such person as may at any time be specified by a notice in writing from the president or vice-president for the time being of the said municipality delivered to the said A. B. or left at his office or at his place of residence then this obligation shall be void and otherwise it shall remain in full force.

Provided always and it is hereby agreed and declared that the said C. D. shall not be at liberty to terminate or revoke as to future transactions the contract of continuing guarantee by which he is above bounden except upon giving to the for the time being of the said municipality two calender months' notice of his intention so to do and until the expiration of the said period of two months his joint and several liability under this bond shall continue in respect of all omissions and defaults on the part of the said A. B. and in every respect as if no such notice had been given.

A. B.

C. D.

Signed and delivered by the above bounden in the presence of

Translations to be printed. - G. R. 4851 of 30th Oct. 1896, Gen. Dep., directs that the translation of these forms should be printed and copies supplied to municipalities on payment.

Stamp duty.—Government has remitted the stamp duty payable under the Indian Stamp Act, on the letter which a person depositing money in a District Savings Bank or Post Office Savings Bank, as security to the Government or a local authority for the due execution of an office or for the fulfilment of a contract or for any other purpose, is required by the rules of the Savings Bank to address to the Secretary of the District Savings Bank, or to the Post Master in charge of the Post Office Savings Bank, agreeing to special conditions with respect to the application and withdrawal of the money deposited and the payment of interest accruing due thereon.

Local authority in this notification means a Municipal Committee, District Board, Body of Port Commissioners or other authority legally entitled to, or entrusted by Government with the control or management of a municipal or Local Fund. (G. of I. Not. No. 3673 of 23rd Oct. 1885 and G. R. 9108 of 12th Nov. 1885, Rev. Dep.)

10 **Appointing, punishing dismissing.**—See Orr's Model Rules, Chapter VI, and note 5 sec. 24.

Section 184 deals with the Chief Officer's powers of appointment and punishment. Sec. note 4.

"*And conditions*" :—These words had been inserted apparently for the purpose of justifying such a rule as one limiting certain appointments in municipal service to men who have passed certain qualifying examinations.