When an appointment is subject to sanction, any service before sanction is *ultra vires*, and the person so appointed cannot recover damages for wrongful dismissal. (*Kedar Nath Bundary* vs. *Corporation of Calcutta* (1907) 11 C. W. No. 801.)

Dismissal of servant principles affecting.—In an action for damages for wrongful dismissal of a servant against a municipality, the pleadings disclosed that the municipality, suspecting their secretary to have misappropriated municipal money, suspended him from service and appointed a committee to enquire into his conduct, and after due investigation found that he had misappropriated Rs. 115 and accordingly dismissed him from service without giving him any further notice.

Held: (1) that ordinarily the onus lies on the master to prove justification for dismissing the servant without the customary notice. (2) That in the circumstances of the present case as disclosed by the pleadings of the parties, the onus had shifted on to the appellant (servant). (3) That it lay on the appellant either to impugn the competency or honesty of the investigating committee or to prove affirmatively that the board acted capriciously or corruptly in dismissing him from service.

In such a case, that Court has not to decide whether the report of the committee was right or wrong, or whether the plaintiff had really embezzeled money, but to decide whether the board acting with due care, or caution had reasonable grounds for believing that he had done so.

Held further, that the appellant having submitted to the investigation of the committee, had acquiesed in his suspension and could not therefore claim his full salary during the period of suspension. (*Chandulal* vs. *Municipality of Sukkur* (1905) Sind Sadar Court Reports, p. 63.)

Power to dispense with services, measure of damages.—The municipality having resolved on abolishing the appointment of Secretary gave plaintiff (the incumbent) notice that his services were no longer required and paid his wages up to the following day (11th Sep.) when he gave over charge. Subsequently correspondence took place between plaintiff, the municipality and the Collector, and finally on the 11th March the municipality stated that on plaintiff tendering his resignation he could be paid up to 2nd March, but plaintiff did not accept their terms and filed his suit for (1) wages from 11th Sep. to 11th April on which date he stated he was finally told his services were dispensed with, and (2) for damage from 11th April to date of suit. The municipality contended that (1) the suit was barred for want of notice under section 167, (2) that it could dispense with defendant's services; (3) did so rightly and (4) defendant had suffered no damages. *Held* that section 167 had no application to a suit based on contract. I. L. R, 25 Bom. 387 and P. J. (1897) p. 140 relied on. The dismissal was not something done in pursuance of the Act, but was under the general rule relating to contracts of service. In addition to the power of summary dismissal for misconduct, a municipality has (in the absence of anything in its rules to the contrary) power to remove a municipal servant from his post on reasonable notice. What is reasonable notice is a question which varies with the circumstances of each case. Having regard to the standard generally adopted in England for "clerks in superior grade" a Secretary of a municipality might be held entitled to three months' notice and not merely one month as held by the lower Court. The ordinary measure of damage in such a case is the amount of wages he has been prevented from earning by reason of his wrongful dismissal after taking into consideration the probabilities of his obtaining employment elsewhere and his duty to use diligence to obtain employment.

As the municipality kept plaintiff in doubt as to his re-employment and only decided this finally on 11th March, plaintiff was entitled to his wages from 11th Sep. to 10th March and not up to 10th October when he filed his suit. (*Municipality of Tatta* v. *Assanmal*, 8 S. L. R. 294.)

11 **Such.**—This word in these 2 places was deleted by Bom. IV of 1904.

12 **Delegation of power to appoint &c.**—In order to avoid petty appeals being brought up to the general committee and important time wasted, the following clause was suggested but not adopted, "determining the cases in which an appeal in every case of re-election, suspension, or dismissal shall lie, and by whom such appeal shall be heard and decided upon."

Under the Panjab Act, section 17 (2), orders fining or removing an officer or servant are appealable to the Deputy Commissioner.

13 **Granting leave.**—See note 5 to section 24; also Orr's Model Rules, Chapter VII.

14 **Pensions.**—See Orr's Model Rules, Chapter VIII.

The Government of India state that in making these rules the pensions and gratuities admissible to servants of a local body should in all cases be limited to an amount not exceeding that payable under the provisions of the Civil Pension Code to a servant of the State for similar service. (G. R. 4112 of 22 Dec. 1884, Fin. Dep.)

The Panjâb Act, S. 34, makes similar provision.

"In cancelling Home Dep. No. 1863-65 of 12th Nov. 1884 (G. R. 4112 of 22 Dec. 1884, Fin. Dep.) which directed that all rules framed by municipal or Local Bodies regulating the grant of pensions to their employees should be submitted, before promulgation, for the approval of the Govt. of India, as it is desirable in all cases to maintain the limitation above referred to, the Governor-General in Council desires that Local Governments and Administrations before sanctioning such rules should consult the $\frac{\text{Accountant General}}{\text{Comptroller}}$ in the matter of obtaining a report from that officer to the effct that the proposed rules are not more liberal than the ordinary pension rules of the C. S. Regulations. (G. of I. No. 26-34 of 19 July 1902, Home Dep.; G. R. 4700 of 25 Aug. 1902, Gen. Dep.)

15 **Gratuities:**—Memo. from the Remembrancer of Legal Affairs, quoted in G. R. 238 of 19th January 1891, Gen. Dep.

"The question is raised whether the Commissioner can sanction the grant by a Municipality of a gratuity to a municipal servant on his retirement, before rules have been passed under section 32 (*e*) of Bombay Act II of 1884.

"2. The power of granting gratuities is mentioned in section 32 alone. No such power is given elsewhere in the Act. Independently of this section no municipal funds, which are held in trust for the purposes of the Acts (section 17 and 18, Bombay Act VI of 1873) could be applied to gratuities. It therefore follows that the powers of a municipality to give gratuities are subject to the limitations expressed or implied in section 32. *Advocate General* vs. *Mayor of Batty* 26 L. I. N. S. 392. Robbinson's Municipal Corporation Act, 226. *Exparte* Mellish, 8 L. I. N. S. 47. Brice on *ultra vires*, 205, 213.

"That is to say the conditions and amount must be—

(*a*) determined by the municipality (not by the Managing Committee, President, or other authority). (*b*) approved by the Governor in Council or such officer as he appoints in this behalf.

"3. But the conditions and amount may be—

(*a*) determined in the case not only of all officers and servants 'but in the case of any of them,' (section 32 (*e*)) and (*b*) altered by rules from time to time similarly made (section 32, initial paragraph).

"4. As therefore a rule may, in the first instance, be made applicable to 'any of such officers and servants,' and may be altered at any time, I do not think there is any objection to the resolution passed in this instance being sanctioned as a rule applying to the particular case in point. The main intention of the legislature evidently was that no municipality should determine the conditions and amount of gratuity without the sanction of superior authority to the principles on which the grant was to be made. This intention, will in this instance, it seems, be fully satisfied (if the resolution was passed by the municipality) by sanction being given to it as a special instance, without awaiting the preparation of an exhaustive set of rules under Section 32 (*e*).

"The justification for granting gratuities on account of past services is the stimulus to servants in the future. And for this reason definite principles are required to be laid down. If the present instance is to afford a precedent the sanction should, I think, distinctly state the conditions, *i. e.*, the principles on which it is given. If on the other hand it is to be regarded as an isolated rule, a clear statement to that effect in the sanction seems equally necessary."

The opinion of the Honourable the Advocate General was as follows :—

"4. I think that, independently of the reasons given by the Legal Remembrancer, Government, or the Commissioner, in cases entrusted to his discretion by G. R.No. 389 of February 7th, 1877, have the power to grant such sanction. The passing of rules under section 32 is not a condition precedent to a municipality dealing with the subjects in respect of which the rules are to be made, as otherwise the municipality could not employ a single servant until such rules were passed. I cannot consider the grant of a gratuity to a retiring servant in a fitting case to be a misapplication of municipal funds, and think that the case of *e. p.* Malish 8, L. I. N. S. 47 referred to by the Legal Remembrancer was decided on the special terms of the statute then applicable. It has been laid down that the grant of a gratuity in a fitting case to a retiring servant of a Commercial Corporation is a proper expenditure of its funds; and in this respect I can see no distinction between a Commercial and a Municipal Corporation, the object of both being to secure faithful service. In my opinion the Commissioner has power to sanction the gratuity in the present case, as it does not exceed one year's pay of the servant to whom it is to be given." (G. R. 238 of 19th January 1891, Gen. Dep.)

16 **Compensation to surviving relations.**—See Orr's Model Rule 231.

This clause beginning "and prescribing" to the end was inserted to meet the case referred to in G. R. 3513 of 6th July 1900, Gen. Dep. The Special Committee were of opinion that it would not be well to go beyond the limits of the Civil Service Regulations, and amended this clause on the lines of section 91 (7) of the Bombay City Improvement Act IV of 1898.

17 **Pension and Provident Funds.**—The marginal note should include the words "pension and."

Pension Fund.—No contribution for pension from the Government General Revenues on account of municipal officers can be accepted, but it is open to a Municipal Board to purchase pensions or annuities for its servants from the Post Office (Life Assurance Branch) under Rule 1 of section 86 of the Code, or make other arrangements for the payment of pensions from its own funds, subject to the confirmation of Government. G. R. 592, date 5th March 1886, ruled that the pensions of karkuns employed in Government offices on the business of municipalities will be paid by Government. (G. R. 1774 of 22nd June 1886, Fin. Dep.)

The grant and payment of pensions may be in conformity with the general terms of the Government pension rules, but Government is in no way responsible.

Pensions to teachers in Municipal Schools.—By G. R. 2213 of 14th November 1889 and 313 of 4th February 1890 (Educ. Dep.) for all teachers in every municipal school existing in 1889-90, the arrangement referred to in Article 63, Civil Service Regulations, takes effect from 1st April 1889, whereby any municipality may make a permanent arrangement with Government for contributing for pensions from the General Revenues for their permanent teachers by paying to Government a lump sum between the 1st and 15th of April of each year, equal to one-ninth of the sanctioned salaries of the several appointments.

See rule 7 of the rules framed by Government under section 58.

G. R. 3990 of 21 July 1905, G. D. approved of the following rule and directed that all municipalities should adopt it:—No contribution on account of pensions will be received, nor will any pensions be granted by the municipality except their proportionate share of pension for inferior service rendered to them by teachers of Primary Schools for whose superior service the municipality pay pension contribution.

G. R. 39 of 8 January 1907 Educ. Dep. directed that the Director of Public Instruction, when submitting applications for pensions or gratuities to be paid to Educational employes from municipal funds, should state whether the municipality concerned had adopted the above rule.

It was pointed out in the correspondence published with G. R. 2687 of 5 Nov. 1908 Educ. Dep. that the permanent arrangement for pension contribution under Article 802 C. S. Regulations applied to men in superior service, while the proposed rule made a gratuity or pension admissible to an educational employe in inferior service. This was necessary for maintaining the efficiency of the system of primary education under which such employés were interchanged between Government, District Local Board and Municipal Schools. Municipalities thus obtain for their schools trained men, for whose training they do not pay, and have the benefit of selection from a large class of teachers. It was therefore incumbent that municipalities should bear their share of the burdens and responsibilities of the system.

Provident Fund.—See Orr's Model Rules 233 to 245.

Government of India No. 90, of 31 May 1901, Home Dep. (Muni.):—

In exercise of the power conferred by section 6 of the Provident Funds Act, 1897 (IX of 1897), the Governor-General in Council is pleased to extend the provisions of the said Act to the Provident Fund established by the Karachi Municipality for the benefit of the employes under section 32, clause (*f*), of the Bombay District Municipal Act, 1884 (Bombay Act II of 1884). G. R. 3339 of 12th June 1901, Gen. Dep.

Any subscriptions to such a Fund in the hands of the Trustees of the Fund are not liable to attachment. (*Seth M. L. Parruch* v. *Gainsford*, I. L. R. 35, Cal. 641; (190) 12 C. W. N. 623).

18 **Taxes.**—See Orr's Model Rules Chapter X.

Section 59 states what taxes may be imposed by a municipality. Under section 60 it is for a municipality to select any of these taxes and then prepare rules prescribing what are the taxes so selected to be levied, specifying the class or classes of person or property, &c., to be made liable and any exemption desired to be made, the amount or rate of such classes as are to be liable and all other matters Government may require.

A rule to the effect that the tax shall come into force from such date as the councillors may, at a general meeting determine, would not be in accordance with the Act. (G. R. 42

of 5th January 1887.) Now section 62 clearly requires that the tax must operate from the date fixed in the notice.

A rule must not attach a penalty to its infringement. This is the property of a by-law, not of a rule.

A rule which proposes to levy a duty, not in respect of goods, but in respect of a refusal to declare or show the goods, is not in accordance with the letter or spirit of the Act.

Powers which the Legislature has not seen fit to confer cannot be assumed by rules or by-laws.

Sections 76 to 81 provide for certain powers as to octroi or tolls. Rules cannot be made giving any additional powers. Express statutory authority is necessary for the exercise of such powers. (*Vide* Lumley on By-laws, page 206 and 216.).

A by-law that a tax paid in arrears be charged a higher rate was negatived as not authorised by the Act. The extra charge would be treated as a penalty by the Civil Courts and would be disallowed.

Subject to the provision of Chapter VII.—Hence the fact that the rules have been sanctioned regarding a tax, can affect only the form and not the substance or essentials concerning the nature of the tax which has to receive approval under sec. 61.

Liability of Railway administration to pay taxes.—Sec. 135 of the Indian Railways Act 1890 provides that the Governor-General in Council may declare in the case of each railway administration the taxes which it is liable to pay in aid of the funds of the particular municipality concerned. (G. R. 6791 of 21st Nov. 1911 Gen. Dep. publishes certain notifications dated 24th August 1911 by the Government of India Railway Department regarding such taxes.)

19 **Exemptions, remissions and refunds.**—See Orr's Model Rules 246 to 249.

Principles governing remissions and exemptions.—Leg. Rem. G. R. 3701 of 14th July 1900, Gen. Dep.—"Though a municipality might abolish or reduce a tax so as to render it no longer leviable, they could not, as long as the rules are in force, permit any deviation from them in favour of individuals, *i. e.*, they must grant exemptions in accordance with definite principles laid down in the rules as approved by the sanctioning authority, and cannot reserve to themselves the power in any case, where the general public is subject to a specific burden, to relieve individuals at their own discretion in defiance of the rules. The principle is of course the same with burdens imposed by the Legislature, *viz.*, that when a burden has been imposed by or under statutory authority, exemptions from such burden can only be given in exercise of an authority derived from the Legislature. As an instance of this the papers underlying G. R. No. 327, Marine Department, dated 13th August 1884, may be with advantage referred to. It will be seen in that case that where a power was given to exempt vessels entering a port, the Government of India construed the provision strictly as not extending to a power to exempt a certain class only, as it was thought that no power was conferred to create, in favour of individuals, inequalities in the distribution of the public burdens. Thus, according to Mr. Naylor's view, it would be open to a municipality to lay down by rules the general principles on which immunity should be recognised, but not to reserve themselves power to grant exemptions at their own discretion without predetermined principles, approved by the authority specified in this behalf in the constating enactment. That is, if a municipality desire to exempt, they can do so by framing rules prescribing the principles on which exemption shall be claimable, but they cannot play fast and loose with rules made under statutory authority, enforcing them when they choose and relaxing them at pleasure, so that the principles of exemption are unascertainable and that the exemptions should not be claimable as of right, but conceded only, at the discretion or pleasure of the municipality."

"As long as a tax is leviable under the rules, individuals liable to it cannot be let off the tax at pleasure of the municipality, but can only be exempted by such a modification of the rules as would entitle them and all other persons having precisely the same gorunds for exemption, to claim the exemption as a matter of right. A municipality would act *ultra vires* in remitting a tax by relaxing the rules under which it is leviable. The rules themselves must contain the grounds of exemption, so that exemption, may be claimable as a definite right, but if the rules contain no such exemption, they must be enforced."

In regard to a proposed rule to exempt from payment, or charge at a lower class, a person too poor to pay the full rate, the Legal Remembrancer (G. R. 1910 of 13th May 1895, Gen. Dep.) remarks:—

"2. Section 21 of VI of 1873 contemplates that provision should be made in the rules for a tax, the liability to which has been *defined* and that the tax shall be imposed accordingly, *i. e.*, in accordance with a liability defined, and not in accordance with principles to be thereafter determined by a Committee, and unenforceable by the Courts, if not observed by such Committee.

"3. The rule as drafted *pro tanto* transfers to the Committees mentioned, the power to determine the principles on which liability is to be ascertained, instead of providing, with the approval of the Governor in Council, a definition of liability which in the last resort the Courts can interpret and enforce.

"4. It is always open to the municipality, or to a Committee under their instructions, to abstain from directing a prosecution by information laid for recovery of arrears in any case in which it is thought undesirable to give such directions under section 82. (now 161 (1).)

"5. But if a *right* to exemption is to be given by rules framed as contemplated in section 21, that right must, it is submitted, be so definite that a Court can, if the right is claimed and disputed, decide from the rules themselves whether, according to the definition approved, the tax can be imposed or not.

"6. The approval of Government cannot with propriety be given to rules for exemption on principles so indeterminate that the municipality cannot attempt to formulate them. Either omit the rule altogether or confer an exemption claimable as a right enforceable, if need be, by the Courts.

"7. A rule stating the minimum income taxable would secure tax-payers against the abuse to which it is recognised such rules have a tendency to lead."

Refunds.—See Orr's Model Rules 250 to 253.

The Punjab Act, sec. 143 (2), provides that by-laws, regulating the system of refunds of octroi may, among other matters, provide a limitation after which no claim for refund shall be entertained, and also that no such refund shall be made when the amount is less than one rupee.

With respect to a proposed rule to "exempt houses, &c., from the payment of the whole or part of the tax, on account of the extreme poverty of the owners or other sufficient reason," the Remembrancer of Legal affairs states (G. R. No. 1905 of the 9th June 1892, Gen. Dep.):—

"Now, such a rule would be disallowed, as under clause (*i*), the rule must be one prescribing the grounds on which exemptions are to be recognised, &c.," and clause (*j*) prescribing the conditions subject to which sums due may be written off."

Charges in lieu of water-tax sec. 71.—See Orr's Model Rules 255 to 257.

20 **The fees to be charged.**—See Orr's Model Rules 257 to 275.

For rules for fees to be charged for projections over public streets, see the draft rules approved by G. R. 3076 of 16th April 1908, G. D. for Ahmednagar municipality. (See also note 2, sec. 113.)

Rules need not be published beforehand.—G. R. 719 of 26th January 1915, G. D. concurred in the following opinion that rules for shop boards permitted under sec. 113 (1) need not be published, under sec. 60 (*b*) and (*c*):—

"No doubt section 46 (*i*) lays down that the prescribing of fees charged for licences *inter alia* is subject to the provisions of Chapter VII, but it does not say that it is subject to the particular provisions of section 60 (*b*) and (*c*), and the question is whether section 60 does refer to such fees at all. As observed by the Remembrancer of Legal Affairs in the preamble of G. R. 1414, of 17th March, 1903, 'section 60 (*b*) only applies to rules made under section 46 (*i*) when those relate to a tax.'

"2 Now although 'tax' in section 3 (14) includes a fee, the fee in this case is leviable under section 70 and is not a tax under section 59; and section 60 (*a*) (*i*) indicates what is meant by the word tax in section 60 as it refers to 'one or other of the taxes specified in section 59."

21 **Irrecoverable taxes, &c.**—See Orr's Model Rules, Chapter XI.

The Madras Act IV of 1884, section 51, says, "The Municipal Council may exempt, in whole or in part, from the payment of any tax under this Act, any person who is, in their opinion, become unable by reason of poverty to pay the same, and they may in like manner exempt, with the approval of the Governor in Council, any class of persons."

Panjab Act, S. 47, is very similar and provides that the exemptions may be for any period not exceeding a year, and this exemption may be renewed as often as necessary. Also that the committee may, with the sanction of Govt., and Govt. may, by order, exempt in whole or in part "any person or class of persons or any property or description of property."

22 **Government approval.**—The words "or alteration or recission of a rule made" are interpolated here to make the law on the point clearer than it was before.

As the framing of rules and by-laws (of the latter especially) is to some extent a Legislative Act, requiring an acquaintance with legal forms and the general enactments of

law, it is necessary that the rules and by-laws drawn up by municipalities should not have effect until they have been approved by some central authority who can command the services of able legal advisers. For this reason it is still required that the sanction of the Governor in Council shall be obtained.

It will be observed that by-laws in addition to sanction, require to be locally published for any objection which may be taken to them by the inhabitants, and that their objections have to be re-considered by the municipality and Govt., before sanction can be given. This distinction is based upon the difference to be observed between

(*a*) Statutory powers and duties, and

(*b*) privileges to be exercised for the profit of the public body on whom they are conferred. (*Mersey Docks Trustees* vs. *Gibbs* T. H. of R. 93.)

"It should be understood by all Local and Municipal Boards that generally the Government Regulations on the subject of pensions and similar matters are those which should be followed in order to secure the approval of Government. (G. of I. No. 1863-65 of 12 Nov. 1884, Home Dep.; G. R. 4112 of 22 Dec. 1884, Fin. Dep.)

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

The Commissioners of Divisions are authorised under this section. (G. R. No. 3046 of 27th Aug. 1884, Gen. Dep.)

24 **Provisoes (*b*) and (*c*).**—The wording of these provisoes which are merely an amplification of clause *(j)* of the old Act, 32 and was in accordance with Government of India Not. No. 2518 of 10th June 1882, has been somewhat altered at the express wish of the Government of India.

47. Subject to the requirements of clause (*a*) of the proviso to section 46, every municipality may, except as otherwise provided in clause (*b*) of the proviso to section 74, at any time for any sufficient reason, suspend, reduce or abolish any existing tax by [2]suspending, altering or rescinding any rule prescribing such tax under the provisions of clause (*i*) and of the first clause of the proviso to section 46.

[1] Power to suspend, reduce or abolish any existing tax.

1 **Origin of section.**—This is meant to make it clear that all alterations of taxation, except taxes required to be imposed by Government under section 74, may be initiated by the municipality, but require the sanction of Government or the Commissioner, under section 46. This section disposes of all the questions discussed in G. R. 1716 of 9th May 1885; 2395 of 27 June 1885; 852 of 24th February 1890; 4946 of 16 December 1890; and 3701 of 14th July 1900.

This previous sanction is necessary, as such an alteration of a tax might introduce an unfairness in its incidence, even though the alteration were only a suspension, reduction, or abolition of a tax. The Panjab Act, section 46, contains very similar provisions

When an alteration of a tax requires to be notified:—It must be noted that this section applies only to the suspension, reduction, or abolition of taxes. The "altering" of "any rule" so as to otherwise suspend, reduce or abolish the tax, that is to say, so as to make the tax, different in any way whatever from the existing tax is not contemplated by the section. Such a rule would be a rule imposing a tax and as such must be subject to the requirements of section 60-62. The principle being that any rule which adds a burden of any kind on people, even if the burden is not an increased one, but only different in kind, it should not be imposed without due notice to all concerned for their objections if any. But any alteration in a rule which does not impose any fresh burden whatever, whether in kind or quantity, would not obviously call for objection from any one and therefore would not require to be notified.

2 **Suspension of rules.**—As any alteration of a rule has to be done in the first instance by the passing of a resolution, which resolution would then be a modification or cancellation of a previous resolution, the time within which such alteration can be made is subject to section 26 (12). By G. R. 2395 of 27th June 1885, Gen. Dep., Commissioners were authorised to exercise the power of approving any rule for suspension, alteration or revision of taxes which are lawfully leviable.

48. (1) Every municipality may from time to time, with [1]Power to make by-laws; the previous [2]sanction, in the case of City Municipalities, of the Governor in Council, or in other cases of the Commissioner, make, alter or rescind by-laws, but not so as to render them inconsistent with this Act,

(*a*) for the regulation and inspection of markets and slaughter-houses and all [4]places used by or for animals which are for sale or hire, or the produce of which is sold, and for the proper and cleanly conduct of business therein; and for fixing the [5]rents and other charges to be levied, for the use of any of them which belong to the municipality; [3]for markets and slaughter houses, &c., &c.;

(*b*) prescribing the conditions on or subject to which, and the circumstances in which, and the areas or localities in respect of which, licenses may be granted, refused, suspended or withdrawn for the use of any place not belonging to the municipality, [6]for licensing, regulating and inspecting certain businesses;

(i) as a slaughter-house,

[7](ii) as a market or shop for the sale of animals intended for human food, or of meat, or of fish, or as a market for the sale of fruit or vegetables,

(iii) for any of the purposes mentioned in sub-section (1) of section 151,

and providing for the inspection and regulation of the conduct of business in any place used as aforesaid, so as to secure cleanliness therein or to minimise any injurious, offensive or dangerous effect arising or likely to arise thereform;

(*bb*) prescribing the conditions on or subject to which and the circumstances in which and the areas or localities in respect of which licenses may be granted, refused, suspended or withdrawn for the use of whistles and trumpets operated by steam or mechanical means in factories or other places for the purpose of summoning or dismissing workmen or persons employed; [8] for licensing the use of steam whistles, etc;

(*c*) prohibiting the stalling or herding of horses, camels, cattle, donkeys, sheep or goats, otherwise than in accordance with such regulations prescribed in such by-laws in regard to the number thereof, and the places to be used for the purpose, as may be necessary to prevent danger to the public health; [9]regulating the stalling of cattle, &c;

(*d*) (i) for the inspection of milch cattle; and prescribing [10]for regulating dairies and cattle sheds; and regulating the construction, dimensions, ventilation, lighting, cleansing, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of dairy-men or milk-sellers;

(ii) for securing the cleanliness of milk-stores, milkshops and vessels used by milk-sellers or buttermen for milk or butter; Milk-stores &c.,

(*e*) for the inspection of weights and measures under [11]for inspection of weights and measures, sections 143;

(*ee*) for defining the standard weights and measures used within the municipal district;

(*f*) for the registration of births, deaths and [13]marriages, [12]for registration of births, &c; and the taking of a [14]census within the municipal district [15]and for enforcing the supply of such information as may be necessary to make such registration or census effective;

(*g*) regulating the disposal of the dead and the maintenance [16]regulating the disposal of the dead; of all places for the disposal of the dead in good order and in a safe sanitary condition, due regard being had to the religious usages of the community or section of the community entitled to the use of such places for the disposal of the dead;

(*h*) for enforcing the supply of information as to any cases [17]for enforcing information as to epidemics; of dangerous disease, and carrying out the provisions of sections 144 and 145;

(*i*) for enforcing the supply of such information by in- [18]for enforcing information as to liability to municipal taxation; habitants of the municipal district as may be necessary to ascertain their respective liabilities to any tax imposed therein;

(*j*) fixing octroi limits and stations; providing for the exhibition of tables of octroi; regulating, [19]octroi by-laws; subject to any [20]general or special orders which the Governor-General in Council may make in this behalf, the system under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody or storage of animals or goods declared not to

be intended for use or consumption within the municipal district; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained, and the minimum amount for which any claim to refund may be made;

(*k*) for conserving and preventing injury to sources and means of water-supply and appliances for the distribution of water whether within or without the limits of the municipal district; and regulating all matters and things connected with the supply and use of water and the turning on or turning off and preventing the waste of water, and the construction, maintenance and control of municipal water-works and of pipes and fittings in connection therewith, whether the property of the municipality or not;

[21]for protecting water;

(*l*) regulating the use of public bathing and washing places within municipal limits;

[22]regulating public baths, &c.;

(*m*) regulating [23]sanitation and [24]conservancy and the disposal of carcasses of dead animals;[25]

for conservancy;

(*n*) regulating the conditions on which premission may be given for the temporary occupation of, or the erection of temporary structures on public streets or for [27]projections over public streets, and regulating the structure and dimensions of plinths, walls, foundations, roofs and chimneys of new buildings, for the purpose of securing stability and the prevention of fires, and for purposes of health;

[26]regulating structures and buildings;

(*o*) for preventing the erection of buildings without adequate provision being made for the laying out and location of streets;

[28]for providing for streets;

(*p*) for ensuring the adequate ventilation of buildings by the provision and maintenance of sufficient open space either internal or external and of doors and windows and other means for securing a free circulation of air;

[29]for ensuring ventilation;

(*q*) in a City Municipality, prescribing the qualifications of surveyors or persons by whom plans required under section 96 are to be prepared, or of plumbers; for licensing persons to be surveyors or plumbers, and fixing the fees chargeable for such licenses; and for modifying the provisions of, or revoking such licenses; and prohibiting any alterations

[30]requiring qualified surveyors in City Municipalities;

or repairs or fittings to water or drainage-pipes or house-connections being carried out or made, except by such persons;

[31]control of drains;

(*r*) regulating, in any other particular not specifically provided for in this Act, the construction, maintenance and control of drains, sewers, ventilation shafts, receptacles for dung and manure, cesspools, water-closets, privies, latrines, urinals, and drainage or sewerage works of every description, whether the property of the municipality or not;

[32]requiring information and plans in certain cases;

(*s*) determining the information and plans to be required by the municipality under sections 91 and 96;

[33]for controlling unwieldy traffic, and

(*t*) prohibiting the transit of any vehicles of such form, construction, weight or size, or laden with such machinery or other unwieldy objects as may be deemed likely to cause injury to the roadway, or to any construction thereon, or risk or obstruction to other vehicles or to pedestrians along or over any street, except under such conditions as to time, mode of traction or locomotion, use of appliances for protection of the roadway, number of lights and assistants, and other general precautions as may be prescribed, either generally in such by-laws, or in special licenses to be granted in each case upon such terms as to time of application and payment of fee therefor as may be prescribed in such by-laws; provided that no such by-law relating only to any particular street or portion of a street shall be deemed to be in force, unless and until notices of such prohibition shall have been posted up by the municipality in conspicuous places at or near both ends of such street or portion of a street;

[34]regulating municipal administration.

(*u*) generally for the regulation of all matters relating to municipal administration.

[35]Fine may be imposed for infringement of by-laws.

And every municipality may, with the like sanction, prescribe a fine not exceeding five hundred rupees for the infringement of any such by-law.

[36]Publication of drafts of proposed by-law.

(2) Every municipality shall, before making any by-law under this section, publish in such manner as shall in their opinion be sufficient, for the information of the persons likely to be affected thereby, a draft of the proposed by-law, together with a notice specifying a date on or after which the draft will be taken into consideration, and

shall, before making the by-law, receive and consider any objection or suggestion with respect to the draft which may be made in writing by any person before the date so specified.

Objections and suggestions to be submitted to Government.

(3) When any by-law made by a municipality is submitted to the Governor in Council or Commissioner for sanction, a copy of the notice published as aforesaid and of every objection or suggestion so made, shall be submitted for the information of the Governor in Council or Commissioner along with the said by-law.

1 **By-laws.**—See Orr's Model By-laws, Part II.

Much of this section is a re-enactment of sec. 33 of the old Act, and other parts are taken from the City of Bombay Municipal Act, 1888, sec. 461.

Municipalities and their presidents might with advantage, before proceeding to frame by-laws, devote a little time to the study of the Acts under which they exercise their powers. (G. R. 786 of 18 Feb. 1896, Gen. Dep.)

Validity of by-laws under repealed Acts.—Held, that where it is clear that a by-law under Bengal Act V of 1876, was *ultra vires* of that Act, sec. 2 of Bengal Act III of 1884, which lays down that all by-laws prescribed under any enactment repealed by that Act shall be deemed to have been prescribed under that Act, cannot make *intra vires* the by-law which was original invalid. The word "prescribed" must mean "duly" or "lawfully prescribed." (*Beni Madumb Nag* v. *Motilaldas*, and *Howrah Municipality*, I. L. R. 21 Cal. 837). See note 3, sec. 2.

Statement of reasons for proposed by-law.—Whenever a by-law is sent to Government for sanction, a statement should accompany it, showing fully the grounds on which it is proposed and the evil which it is intended to remedy. (G. R. 2512 of 25th Aug. 1887, G. D.)

Procedure for submitting proposals for by-laws, &c.—On several recent occasions proposals from municipalities for by-laws or similar regulations have reached Government expressed in such unintelligible language or so palpably *ultra vires* that it was clear that the officers who forwarded them had not scrutinised them with sufficient care. The Governor in Council requests that Commissioners of Divisions will in future carefully examine all such proposals, and if necessary return them for amendment, before submitting them for the sanction of Government.

2. Except when the Collector is satisfied that the proposal is so free from difficulty or ambiguity that no legal opinion is required, or in the rare cases when a municipality is too poor to pay for a legal opinion, the Government Pleader or some other duly qualified legal practitioner approved by the Collector should be asked to revise the draft before it is submitted for sanction. In such cases the municipality should be allowed to submit for the Collector's approval the form of reference required and the name of the legal practitioner whom it may be desired to consult. On the municipality failing to take such action, the Collector should take the necessary steps. The cost of the reference should be borne by the local body concerned.

3. It is only in cases of special importance or difficulty that municipalities or Local Boards are entitled to seek the advice of the Remembrancer of Legal Affairs (No. 30 of the rules regarding the Law Officers of Government.) Circular No. 3001 of 26th May 1898, G. D.

By-laws must be reasonable.—There are innumerable decisions to the effect that by-laws must be reasonable, and that a by-law in restraint of trade is bad, unless supported by a custom.

See Lumley on By-laws, pp. 120, *et. seqq.*; *Hesketh* vs. *Braddock*; 3 Burr. 147. Fisher's Digest, 1992, Luis Lea, Ca. Vol. I; *Mitchell* vs. *Reynolds* and cases thereunder.

"The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India.

The Municipal Board of Naini Tal passed a by-law under the powers conferred upon it by section 128, clause (*c*), of Local Act No. 1 of 1900 to the following effect namely:—"No coolie whether bearing loads or not, no servant except in attendance on his master, and no prostitute shall use the upper north mall' (one of two parallel roads running along the north side of the Naini Tal lake)' at any time."

Held that as regards the words "no servant, except in attendance on his master," this was under the circumstances an unreasonable by-law; and the Court declined to give effect to

it. "It is intelligible that strings of coolies bearing loads may be inconveniences and might be under certain circumstances grave inconveniences to the public. But it is difficult to distinguish between the case of a servant carrying a letter, as in the present instance, and a person of similar position in life say a carpenter or a blacksmith passing along the upper north mall. The servant would be under the by-law, if it be a good by-law, committing an offence, the independent carpenter or blacksmith would be committing none * * * . The distinction made between a person who is a servant and a person of a similar degree who is not a servant is both invidious and unreasonable." (I. L. R. 24, All. 349, *Emp.* vs. *Bal Kishan.*)

Ordinarily a corporation or company, whether authorised by prescription or by charter, or by statute, to make rules, or, as they are more frequently styled, by-laws, cannot make any valid rules which are unreasonable in themselves: Com. Dig. "By-law," (B. 1) (C. 6, 7); 8 Rep. 126; 11 *Ibid.* 54 *b*; *Ellwood* vs. *Bullock*, 6 Q. B. 383.

By-laws must be consistent with the Act.—It is certain that a corporation, or company, or other public body, whether created by Act of Parliament or by Charter, has not any power of making by-laws beyond what is clearly given to it by the Act or Charter: *Kirts* vs. *Nowil*, 1 T. R. 118, 124, *Rex.* vs. *Spencer*, 3 Burr. 1827, 1837, 1838, 1839; *Rex. Cutbush* vs. 4 Burr. 2204, 2207, 2208, *Rex.* vs. *Breton*, *Ibid* 2260, 2267; *Dunstin* vs. *Imperial Gas Company* 3 B. and Ad. 125; *Reg.* vs. *Wood* 5 El. *and* Bl. 49 S. C. now *Reg.* vs. *Rose*; 1 Jur., N. S. 802; 24 L. J. M. C. 130; *Deardon* vs. *L. Townsend*, R. 1. Q. B. 10; *Waite* vs. *Local Board of Health*, L. R. 3 Q. B. 5. Such rules or by-laws if inconsistent with the provisions, either express or implied, of the charter or statute would be void as being *ultra vires*, although sanctioned by the Executive Government.

See also I. L. R. 37 Cal. 545 note 35 *infra.*

By-laws must be consistent.—"(1) The power given to Municipal Commissioners, of making rules cannot warrant the making of rules inconsistent with the Act, even though they may be sanctioned by the Executive Government. (*Reg.* vs. *Yenku Bapuji and others* 8 Bom. H. C. R. Cr. Ca. 39.)

By-law as to non-exportation when ultra vires—Under the Karachi Municipal rules framed under sec. 32 (*h*) of Bom. II of 1884, non-exportation of goods protected by a pass granted under clause 1 of the rule, and not non-production of such pass at the time of exporting them, determines the liability of the importer or the holder of the pass to pay the municipal duty on such goods. Therefore, where an importer to whom a pass under clause 1 of rule 8 of the rules above referred to had been granted, did not produce the pass while exporting the goods, *Held* that he was not liable to pay the municipal dues simply because he did not produce the pass. The municipality had no power in taxation rules to impose on the public the observance of certain formalities and to penalise non-observance under color of fiscal liability. (*Karachi Municipality* vs. *Messrs. McIver Mackenzie.* Sind Sadar Court Reports Vol. I, 1899. Criminal Rulings, p. 79).

By-law partly ultra vires.—As to how far a rule partially *ultra vires* and partially *intra vires* can be enforced, Chief Baron Comyn in his digest Bye-Law (C. 7) says:—"A bye-law being entire (*i. e.*, indivisible), if it be unreasonable in any particular, shall be void for the whole; as if the penalty be unreasonable, or to be levied by imprisonment, sale, &c., &c."

In *Rex* vs. *Favershaw*, 8. T. R. 352, 356, Lord Kenyon C. J. said:—"Though a bye-law may be good in part and bad in part, yet it can be so only where the parts are entire and distinct from each." Watson B., in giving judgment in *The Blackpool Board of Health* vs. *Bennett* (4. H. and N. 137, 138) observed, "Although the old rule of law to be found in Com. Dig. By-law (c 7) which says that a by-law bad in part is bad in the whole, is qualified to this extent, that, if the good part is independent and unconnected with the bad, the good part would be valid and binding; *Rex* vs. *Favershaw.*"

The case of *Reg.* vs. *Lundie* (8 Jur., N. S. 640) is one in which a by-law was held to be bad in part and good in part.

By-laws which are ultra vires.—A municipality cannot make a by-law requiring the police to give information of municipal offences.

2 **Governor-in-Council's sanction.**—In Sind the Commissioner exercises this power (*vide* note sec. 3 (2)).

"*Alter or rescind.*"—See note 2 sec. 11. "Every corporation too has a right, as of course, to alter, or repeal, the by-laws, which itself has made." 3, Steph. Com. 13. The Act does not seem to provide for the alteration or cancellation of a by-law by Government direct. The Panjab Act, sec. 146, after providing for the confirmation by Government of a by-law, provides "(2) The Local Government may cancel its confirmation of any such by-law, and thereupon the by-law shall cease to have effect." The Bom. City Act, sec. 470, provides a procedure for Government repealing by-laws. If it should appear to Government undesirable

that a particular by-law should remain in force, apparently the procedure would be for the Collector to exercise his power of control under sec. 173 (1) (*c*) and sec. 174.

3 **Markets, slaughter-houses, &c.**—See Orr's Model By-laws, Chapter I.

This clause is a reproduction of the old clause (*a*) with this difference that the words "or for houses" have been omitted; the words "for sale or" inserted; and instead of the words "charges to be made" have been substituted the words "rents and other charges to be levied."

Section 54 (*i*) makes it a duty of a municipality to construct, &c., markets and slaughter houses.

The City of Bombay Municipal Act, 1888, section 461, besides (*m*), regulating the use of markets, slaughter-houses, &c., (*n*) controlling, &c., their sanitary conditions and preventing the exercise of cruelty therein, provides (*k*) not only for securing their efficient inspection, but also "of shops in which articles intended for human food are kept or sold," and (*l*) "the control and supervision of butchers carrying on business within the city or at a municipal slaughter-house without the city."

See sec. 52 as to extra mural slaughter-houses.

The Panjab Act, sec. 143, also provides for by-laws for inspection and regulation of pounds, sarais, dhobies ghats and flour-mills.

Principles for framing by-laws.—Paras 26 to 29 of G. R. 3990 of 13 Nov. 1888, accompaniment to G. R. 1513 of 16 April 1889, Gen. Dep.:—

As to slaughter-houses.—"26. Municipalities generally seem to have failed to grasp the object of section 33 (*a*) of Bombay II of 1884. (Now section 48 (*a*).)

"They are not required to regulate or inspect the cattle brought to the slaughter-house, but to regulate and inspect the slaughter houses themselves and their management and the conduct of business therein, not in order to restrain the slaughter of cattle, but in order to prevent or diminish the noxious, injurious, offensive or dangerous effects that might arise from mismanagement.

"I would venture to suggest that as this matter is so generally misunderstood, my remarks in connection with it, if approved by Government, should be communicated to municipalities generally.

"The nature and object of the by-laws to be made may be illustrated by reference to sections 404 and 406 of the Bombay City Act III of 1888 and to the English Towns Improvement Clauses Act 10 and 11, Victoria Chapter 34, Section 128, which show that the object of putting under control places used for the slaughter of animals is—

(*a*) to prevent cruelty therein;

(*b*) to keep the same in a cleanly and proper state;

(*c*) to remove filth;

(*d*) to see that they are provided with sufficient water, drainage and ventilation.

"27. Some admirable model by-laws carrying out these objects are contained in Lumley's By-laws, pages 395 to 404, and it may be useful to municipalities to consider the following summary of their provisions:—

(1) Every animal brought for slaughter is to be provided during its confinement with a sufficient quantity of wholesome water.

(2) The head of the animal to be slaughtered shall be securely fastened so as to enable the animal to be felled with as little pain or suffering as practicable (for of course if the animal moves, repeated blows might be necessary) and the instruments and appliances used, and the method of slaughtering and other precautions taken, shall be such as may secure the infliction of as little pain and suffering as practicable.

(3) Ventilation should be provided in proper order and efficient action, by direct communication with the external air.

(4) The drainage should be kept in proper order and efficient action.

(5) The floors or pavement should be in good order and repair, so as to prevent absorption of blood or refuse, and should be washed at prescribed intervals with hot lime wash (several times a year would apparently be necessary), and every part of the floor, pavement and walls on which blood or refuse or filth has been spilt or splashed, should be washed within an hour or two of the slaughtering.

(6) No dog should ever be allowed inside a slaughter-house.

(7) No animal should be kept in a slaughter-house longer than is absolutely necessary to prepare it for slaughter and if kept for any length of time it should be confined in suitable stalls, pens or pounds.

(8) The hide, skin and offal should be speedily removed after slaughter.

(9) The water-supply for cleansing should be ample and in proper order and efficient action.

(10) Proper vessels of non-absorbent material with closely fitting covers, should be provided for the removal of blood, manure, garbage, refuse, &c., which should be collected and removed at as short intervals as may be practicable, and all vessels so used should be kept thoroughly clean.

"28. These provisions are but a bare outline and suggestion of what is necessary, and the details would have to be filled in by each municipality as experience might suggest to meet local requirements and climatic peculiarities. It would be the duty of the Inspector to see that the regulations were attended to, and a penalty might be attached to an infringement of any of the regulations.

"29. This appears to be the nature of the provision expected from municipalities in order to prevent slaughter-houses from being a scene of revolting cruelty and a source of disease."

Would a by-law authorising an official to prohibit the entry of deceased animals into a slaughter-house be legal? The Remembrancer of Legal Affairs, advised as follows in G. R. 3291 of 14th August 1888, Gen. Dep. :—(*N.B.*—These remarks are to be taken, subject to the modifications of the new Act, especially section 142.)

Maxwell on Interpretation of Statutes, page 264, *et seq.*

"Enactments conferring privileges and powers are always to be strictly construed. No power is to be understood to be so given except by express words.

"2. Section 33 (now 48 (*a*)) authorises by-laws for the regulation and inspection of slaughter-houses, and for the proper and cleanly conduct of business therein. By-laws under that section can only affect the conduct of the business in slaughter-houses, that is, the way in which all that is done there is to be conducted. They are to regulate the *modus operandi*. No power is given over anything else. Least of all is a power given to municipalities or their officers to adjudicate upon the fitness of any animal for food. That is a matter reserved for the Magistrate." (See, however, sec. 142, which authorises the president, &c., to order the destruction of articles of a perishable nature.)

"3. Section 68 shows this clearly by requiring the officer who seizes articles intended for food as unfit, to take them at once before a Magistrate." (Except as to perishable articles.)

"4. It is for the Magistrate, not for the municipality, to decide whether the article is unfit for food." (Except as aforesaid.)

"8. It does not necessarily follow that every animal that is brought to a slaughter-house is intended for food.

"9. I believe in England animals are constantly sent to the slaughter-house, which it is by no means intended to use for food. And if the provisions of section 66 (now 139) are enforced, every animal, whether intended for food or not, should be slaughtered at the municipal slaugter-house, and the municipality having the monopoly could not turn any away. If they could, it would defeat the very object of all the legislation from which provisions of the District Municipal Act are copied, which is to have the necessary slaughter conducted in as humane and cleanly a way as possible.

"10. But though the municipality cannot exclude, they may, and I certainly think, should classify animals. Those not intended for food or suspected to be unfit for food might be segregated and slaughtered apart, and this would enable municipalities to supply the very evidence as to the intended use for food that would be necessary to ensure a conviction under section 273, Indian Penal Code, or section 68 (now sec. 142) of this Act.

"11. There is no law which makes it punishable to slaughter an animal that is not fit for food. There is a law, section 66, (now 139 under which its slaughter elsewhere than in a recognised slaughter-house, would be punishable. The evident object of the legislature is that the municipality should regulate this, as well as every other slaughter, by by-laws to secure its being properly done, and such by-laws may fairly include regulations requiring that animals not intended, or not fit, for food, should be slaughtered apart from those that are. This very segregation would facilitate both the inspection and the conviction in the case of noxious food.

"12. But municipalities cannot usurp the functions of the Magistrate. If, therefore, animals unfit for food are brought to the slaughter-house, there are two courses open—

(*a*) either to admit the animals for slaughter and to segregate them, if they think necessary, or

(*b*) if the animals are intended for food and are deemed unfit for food, to proceed under section 68 (now 142) and obtain a Magisterial decision on the point.

"13. If they decide for themselves that the animals shall not be slaughtered at the municipal or licensed slaughter-house, they practically pass a decision which could only legally be passed by a Magistrate; for the animals cannot be slaughtered elsewhere section 66 (now 139). The duty of the municipality is to regulate slaughter, not to prohibit it. They cannot deprive owners of their right to dispose, as they will, of their cattle, unless an offence is committed, in which case the adjudication rests with the Magistrate, not with the municipality or its officers."

G. R. No. 343 of 23rd January 1890, Gen. Dep., contains the following from the Remembrancer of Legal Affairs:—

"The points to be borne in mind by municipalities in framing by-laws under section 33 (*a*), which appear to be among those most frequently overlooked, are as follows:—

"2. (1) Before a municipality can prohibit the use of any place as a slaughter-house, section 66 (now 139) implies that public slaughter-houses must have been constructed or opened by the municipality.

"The prohibition cannot be enforced until alternative provision has been made by the municipality. Municipalities cannot fulfil that condition by the mere assignment of waste places where animals may be slaughtered.

"(2) The places licensed as slaughter-houses under section 66 and section 33 (*a*), must be such as are used as slaughter-houses, and are capable of being regulated and inspected under by-laws. It is therefore illegal to license the slaughter of animals at private dwelling houses.

"(3) The condition to be binding on licenses cannot be imposed by the licenses granted, but must be imposed by by-laws under section 33 (*a*) which require under section 34 (*a*) local publication, (*b*) re-consideration with reference to objections taken and (*c*) the sanction of Government.

"(4) It is unnecessary and improper to declare, either by rules or by-laws, the principles on which licenses will be granted.

"Municipalities are to exercise their discretion according to circumstances which may vary "from time to time" or in "individual instances" (section 66). They should not therefore attempt to bind themselves, in the exercise of such discretionary powers by regulations which it will be impossible to make exhaustive, which would require Government sanction for alteration or rescission and which would, at most, amount resolutions as to the principles by which they propose to be guided in the exercise of their discretion.

"(5) Fees for licensing private slaughter-houses and markets may be charged under section 22 (now 70). But such fees must be fixed by rules under section 32 (*h*) (now 46 (*i*) and not by by-laws.

"(6) The charges for the use of slaughter-houses, &c., which belong to the municipality, must, on the other hand, be fixed by by-laws under section 33 (*a*) and therefore require—

(*a*) local publication; (*b*) re-consideration with reference to objections taken; and (*c*) the sanction of Government.

"This distinction is based upon the differences to be observed between—

(*a*) statutory powers and duties, and (*b*) privileges to be exercised for the profit of the public body on which they are conferred. (*Mersey Docks Trustees* v. *Gibbs* 1 H. of R. 93.)

"(7) The regulation of slaughter-houses (which must be made by by-laws not by conditions inserted in licenses) can deal only with the conduct of business thereon. They should provide for the—(*a*) proper, and (*b*) cleanly conduct of that business.

"They should aim at—

(*a*) preventing cruelty in the process of slaughter,

(*b*) securing ventilation, drainage, and the removal of filth. (*Vide* G. R. No. 1513 of 16th April 1889).

"The necessity for regulations of this nature is generally overlooked. The proposal of the Surat Municipality that offal should be deposited in the municipal dust-bins, does not secure such cleanly conduct. Section 71 indicates the manner in which such matter should be disposed of, and by-laws to enforce such disposal should be made under section 33 (*c*) (now 48 (*m*)).

"(8) Such regulations cannot legally prescribe what animals should be slaughtered. Municipalities cannot assume the power to decide judicially whether an animal is fit for food. Animals produced for slaughter should not be rejected at public slaughter-houses on this ground. Any considered to be so unhealthy as to be unfit to remain with those intended for food, magisterial interference may be invoked (section 68, (now 142)). A horse brought to the municipal slaughter-house for slaughter could not be turned away, though order might be made for the slaughter thereof in a separate place.

"(9) Municipalities cannot confer on themselves powers by by-laws. Thus they cannot take power to eject persons from slaughter-houses for infringement of by-laws, but can only take steps for the infliction of the fine prescribed by the by-law, or proceed under section 447, Indian Penal Code, for criminal trespass.

"(10) Vagueness is fatal to a by-law. The regulations must be clear as to the obligations to be imposed. A general rule that all orders of Inspectors must be obeyed, is objectionable.

"(12) Section 33 (*a*) authorises the regulation and inspection of places used by or for animals on hire, or kept for the purpose of selling their produce. There is no power given to regulate and inspect private premises, where animals are not kept on the scale necessary for such trades.

"4. *With regard to by-laws under the other paragraphs of section* 34, it is impossible to lay down any exhaustive rules. The general principles above indicated, however, will apply and give general guidance. Municipalities very often propose to substitute general by-laws for the executive action they are required to take in individual instances.

"Similarly instead of exercising the vigilance and control in individual instances required by section 43, municipalities often attempt to relieve themselves of those duties by framing general by-laws requiring all persons irrespective of situation and the like, to trim and prune all their hedges and cut and lop all trees and shrubs. Section 43, however, requires a notice to issue in each individual instance, and such notice can only issue when the hedges border on a public street, or when the trees and shrubs actually do, or appear likely to overhang endanger, obstruct or damage a public road, street or well.

"In the same way it is often attempted to substitute by-laws interfering with the management of private premises for the action which the Act requires to be taken by written notice in each case of insanitary mismanagement.

"5. The above remarks are of course far from exhaustive, but will, I hope suffice to indicate in general outline the principles municipalities should observe and the errors they should avoid in framing by-laws."

4 **Place.**—For definition see note sec. 139.

5 **Rents and other charges.**—By sec. 140 (1), a municipality may take stallage or other rents or fees for the use by any person of any public market or slaughter-house, or sell by auction the privilege of such use.

Fees.—By section 70 (2) fees may be charged, as may be fixed by these by-laws, for the use of any of these places as belong to the municipality.

The right to collect these fees cannot be farmed. See note sec. 59.

6 **Licensing &c. certain businesses.**—See Orr's Model By-laws, Ch. II.—This is clause (*b*), section 33, of the old Act considerably amplified, as it was found that the old provisions of the law were vague and narrow and caused much inconvenience. For instance, it was held that under the old law a municipality could not refuse a license. Sec. 139 provides for the licensing of markets and slaughter-houses.

By-law requiring external structures ultra-vires.—A by-law framed by a District Municipality provided that "every place used for drying fish or fins shall be surrounded with a wall not less than six feet in height or with a fence made of bambu mats or double cadjan leaves."

Held, that the by-law was *ultra-vires* of the powers conferred by s. 33 (*b*) of the Bombay Municipal Act 1884 and Sec. 48 (*b*) of the Bombay District Municipal Act 1901; as both these sections extend only to the regulation of business within the place used, and gave no authority to require external structures. (*Emperor* v. *Raghunath*, (1902) 4 Bom. L. R. 585.)

7 **Market or shop for sale of food.**—Now municipalities not only have greater control over slaughter-houses and markets for sale of animals for human food and of meat, but also of shops used for such purposes and also markets and shops for sale of fish, and markets for sale of fruit and vegetables.

In the Bill as originally framed, the clause was extended also to *shops* for the sale of fruit and vegetables, but the Special Committee thought this undesirable under existing circumstances, and limited it only to *markets* for the sale of fruit and vegetables.

It was suggested that in order to keep the streets clear power should be given to make by-laws regarding the various places in towns where hawkers of all kinds might ply their trades, but it was not adopted, as it was apparently considered that such provisions would be needlessly harassing, and gave opportunities for much black mailing by petty municipal officers, &c.

There does not appear to be in the Act anything to affect hawkers unless they obstruct public streets or open spaces. (Section 122.)

Section 128 of the U. P. Act of 1900 lays down that the Board may by rules provide for the inspection and proper regulation, *inter alia* of any place of public entertainment and resort and charge fees for the use of such places when vested in the Board. A rule was framed prohibiting the sale or exposure for sale of any goods in the street or public place under the control of the Board except by permission and payment of fees. *Held* that the place contemplated by the section was one that was of public entertainment and of public resort, and not merely of public resort; that a street did not come within such a place, therefore the rule was *ultra vires* and accused was wrongly convicted for hawking articles of food for sale in the street. (*Emperor* v. *Imami* (1912) I. L. R. 35 All. 24.)

"*Intended for human food*":—Some confusion may arise out of the loose manner in which the term is used in this clause and in section 139; for here it is made to apply apparently only to 'animals'; in section 139 (1) it is made to apply also to meat, fish 'fruit or vegetables' and in section 139 (2) to 'animals, meat, or fish' only.

8 **Steam whistles.**—This clause inserted by section 15 of the Amending Act of 1914 and is taken from section 393 of the Bombay City Act.

9 **Stalling of cattle.**—See Orr's Model By-laws, Chapter III.

The Madras Act defines 'horse' to include pony and mule. See the Glanders and Farcy Act, 1899 (Act No. 13 of 1899.)

10 **Dairies and cattle sheds, &c.**—See Orr's Model By-laws, Chapter IV.

Section 112-A of the Bombay City Act requires that licenses should be taken out for the trade or business of dealing in or importing or selling or hawking of milk.

11 **Weights and Measures.**—See the Indian Weights and Measures of Capacity Act, 1871, (Act XXXI of 1871) section 8 of which provides that whenever the Governor-General in Council considers that proper standard weights and measures of capacity have been made available for the verification of the weights and measures of capacity to be used by any municipal body, the Governor-General in Council may, by notification in the *Gazette of India*, assert that, after a date to be fixed therein, all or any of the weights and measures of capacity authorised as aforesaid shall be used in dealings and contracts by such body; and may, in like manner from time to time, alter or revoke such direction.

By section 9 after such date all dealings and contracts had and made by the municipality, in the absence of a special arrangement to the contrary, are to be deemed to have been made according to such weights and measures of capacity.

And by section 11, the Governor-General in Council may make rules regulating the conditions under which municipal bodies shall be subject to inspection and verification of the weights, weighing machines and measures of capacity authorised by the Act, and of the balances used by them. And by section 13 all municipal officers are bound to comply with such rules as far as concern them and pay such fees as shall be prescribed.

[*N. B.*—No notifications have as yet been made under this Act.]

The diversity in the weights and measures in use not only in different districts of the Presidency but also in different towns in the same district and even in different parts of the same town has long been recognized as an evil. The result is to create an element of uncertainty in trade, to render fraud on the part of retailers easy and profitable, and to expose the poorer classes to a constant liability of being cheated. With the view of remedying the evil, the Bombay Government in 1902 submitted to the Government of India a proposal for the amendment of the Indian Weights and Measures of Capacity Act (No. XXXI of 1871), and suggested that Local Governments should be empowered, subject to the sanction of the Supreme Government, to prescribe standards of weights and measures for limited areas, after ascertaining what local standards were in use and how they could be made to fit into a general system.

2. The Government of India held that it was not necessary to amend the Weights and Measures Act for the purpose which was in view, and observed that the Municipal Acts of Burma and the Central Provinces empowered municipal bodies to prescribe the standard weights and measures to be used within their limits, and that the Local Government might consider the desirability of making a similar provision in the Municipal Act.

4. Accordingly Bombay Act IV of 1904, introduced this new clause (*ee*) whereby municipalities are given the power to make by-laws for *defining* the standard weights and measure used within their limits. It was considered premature to empower municipalities to *prescribe*

the weights and measures which alone it would be lawful to use within their districts. (G. R. 1756 of 23rd March 1911, G. D.)

The Bill proposed the words "prescribing" but the Select Committee altered this as it now stands as they say, "It appears to us that the new clause *(ee)*, in its present form, which follows that of the Burma and Central Provinces Acts, is not clear and might be construed as giving power to make by-laws prescribing, under penalty, the use of certain standard weights and measures to the exclusion of all others.

"We are informed that this construction has been placed upon the same words in the Central Provinces, but, from the fact that no conviction has ever been obtained under the clause as so construed, we infer that the power has been very little, if at all, used. In Burma, on the contrary, the same meaning is attached to the words as is expressed in our amended clause. We are strongly of opinion that no power in this matter should, at least at present, be conferred upon municipalities beyond that indicated in the Bill as amended by us."

This clause is based on s. 105 (1) (*d*) of Act XVI of 1903. See Orr's Model By-laws, Chapter X.

The law does not enable a municipality to alter the standard of wrights and measures but merely to define than and state what they are.

It was suggested that the provisions of this clause should be extended beyond the limits of the municipality as otherwise there would be some difficulties arising out of transactions taking place with persons outside of and those within the limits.

After the passing of Bom. IV of 1904 the necessity for the standardising of weights and measures was again pressed upon the attention of Government and in consequence G. R. 6047 of 2nd December 1910 G. D. directed that the Commissioners of Divisions should submit a report. G. R. 1756 of 23rd March 1911 appointed a committee to consider the matter and G. R. 3899 of 21st May 1913 published the report together with a draft Bill. Then the Government of India took up the matter and directed the appointment of a committee to report on the subject (*vide* G. R. 7748 of 27th October 1913, G. D.) and G. R. 6293 of 14th August 1915, G. D., publishes a very exhaustive report of the committee and calls for opinions. The matter is thus still under consideration.

12 **Registration of births and deaths.**—This is by section 54 (*l*) an obligatory duty, but not the registration of marriages, which is not even an optional duty as it is under the Bombay City and the Panjab Acts.

A form of by-laws was circulated under G. R. No. 3651 of 4th Sept. 1889, Gen. Dep, for general adoption by municipalities. See Orr's Model By-laws, Chapter VI.

Where the duty is laid upon the parent or guardian of a child or, in case of the death, &c., of such parent or guardian, upon the occupant of the house in which the child is born, a servant of the occupant cannot be held responsible for neglecting to give the information, (*Queen Emp.* vs. *Govinda*, Bom. H. C. Crim. Ruling No. 20 of 1888).

Compare these by-laws with sections 243—249 of the Madras Act. See notes to sec. 54 (2).

13 **Registration of Marriages.**—No municipality has yet adopted any by-laws on this subject.

14 **Census by-laws.**—See Orr's Model by-laws Chap. VI, 5—7. Sec. 56 (*e*) makes the taking of a census a discretionary duty.

Rules for meeting cost of census operations.—In accordance with the practice followed in connection with the census of 1891, the Governor-General in Council is pleased to prescribe the following rules for meeting the cost of census operations in municipalities other than the Presidency towns:—

(i) Government will supply to municipalities, free of all cost, including carriage from the press, the schedules and enumeration books.

(ii) Municipalities will provide at their own cost all the necessary agency for the enumeration, supplemented, in such manner as the Local Government may direct, by the loan of Government officials to act as census officers. They will also meet such charges for contingencies as may be necessary.

(iii) The abstraction and compilation will be carried out by Government agency, municipalities contributing funds, the amount of which will be determined with reference to the charge for the census of 1891, which was made at the rate of three months' salary of one abstracting clerk, on an average scale prescribed by the Provincial Superintendent of Census Operations for every ten thousand of the population dealt with, fractions of that total being paid for proportionately on the same scale.

Special cases, in which the partial exemption of small municipalities containing less than that number of inhabitants is suggested, will be considered by Local Governments.

(iv) The tabulated registers when no longer required by the Provincial Superintendent will, in return for the assistance rendered, be made over to the municipalities concerned, provided that the municipal authorities undertake to preserve them in good order until the next general enumeration. (G. R. No. 5852 of 10th Nov. 1900, Gen. Dep., Government of India No. 255-69 of 25th Oct 1900, Hom. Dep. (Census) .)

G. R. 4927 of 7 Oct. 1910, G. D. directed that as any recoveries to be made from municipalities have to be adjusted in the Accountant General's Office by deduction from charges, Treasury Officers should show these seperately as distinct items in the unclassified portion of the Treasury Cash Account.

15 **Compulsory information.**—This last para. was inserted in order to remove any doubt as to the power of municipalities by by-laws to make registration of vital statistics cumpulsory.

Voluntary information.—Sec. 56 (*e*) provides for granting of rewards for information as to vital statistics.

False information not punishable otherwise than under this Act.—See note to sec. 161 as to "offending against provisions of this Act."

The by-law may attach a penalty to giving false information, or it may make the provisions of sec. 177 Indian Penal Code applicable. If it does the former, the ruling in I. L. R. 22 Cal. 131 noted sec. 161 would apply, otherwise it would not.

16 **Places for the dead.**—See Orr's Model By-laws, Chapter VII. This is taken from the Bombay City Act which contains elaborate provisions on the subject; similar powers are given in the Madras and Panjab Acts.

See sections 54 (*h*), and 150, and notes thereto and I. L. R. 33 Cal. 1290 note 2 s. 50.

It was ruled by G. R. 5944 of 13 Aug. 1913, G. D. that there was no reason for holding that the by-laws must necessarily extend to all the places in the municipal district, and therefore it was open to the municipality to exclude any particular place from the operation of the by-laws.

17 **Epedemics.**—See Orr's Model By-laws, Chapter VIII.

The Panjab Act, section 139, makes it compulsory for information to be given of cholera and small-pox. The Bombay City Act requires every medicial practitioner to give information of existence of dangerous disease. These provisions are taken from the English Public Health Act, 1875 (38 and 39, Vic. C. 55).

Sec. 54 (2) (*a*) makes it a secondary obligatory duty for a municipality to make reasonable provision for taking such measures as may be required to prevent the outbreak of, or to suppress and prevent the recurrence of dangerous disease.

Registration of Cholera and Small-pox cases.—This, which was before optional, may now be made obligatory, and all municipalities should frame and have in operation rules for these purposes. The Collectors should be requested to desire all municipalities in their respective districts to keep registers of cholera and small-pox cases where such registers are not already kept. (G. R. No. 2394 of 10 July 1884, Gen. Dep.)

FORM OF REGISTER OF CHOLERA (OR SMALL-POX CASES).

Date.	Name of person attacked.	Caste.	Sex.	Age.	Whether absent in another town during past 15 days; if so, name the town.	If received medical aid or otherwise.		Recovered.	Died.	Whether there is a cesspool in the house or compound.	Whether there is a well in the house or compound.	Whether the patient was vaccinated.	Remarks.
						From Professional.	From Non-Professional.						
1	2	3	4	5	6	7	8	9	10	11	12	*13	14
													*Added as per G. R. Nos. 3617 and 4487, date respectively the 3rd Oct. and 6th Dec. 1884.

This form was ordered for general adoption by G. R. 3108 of 29th Aug. 1884, Gen. Dep. Column 13 is to be used in small-pox cases only.

Cholera mixture.—Where dispensaries exist at the headquarters of a taluka the supply of cholera mixture for Civil and Police authorities and for purchase by Local Bodies such as municipalities, should be kept in the dispensary and supplied thence. (G. R. No. 3351 of 13th Sep. 1884.)

Measures to be taken on outbreaks of Cholera.—See G. R. No. 892 of 14th March 1884, Gen. Dep., for instructions drawn up by the Sanitary Commission for the guidance of villagers regarding measures to be taken with reference to outbreaks of cholera.

18 **Enforcing information of liability to taxation.**—See Orr's Model By-laws, Chapter IX.

This is adopted from the Panjab Act, sec. 55 (1), under which the omission to supply, or the supplying of untrue information, is punishable with a fine of Rs. 100.

Section 187 of the Bom, City Act provides that returns may be called for from owners of premises, vehicles and animals.

By-law punishing evasion of taxes.—Sanction was asked to the following by-law:—

"Any person or persons found guilty of intentionally evading or attempting to evade the payment of the municipal house and property tax, wheel-tax, toll, license or other municipal tax, duty, fee or impost shall be liable on conviction before a Magistrate to be punished with a fine not exceeding Rs. 25."

On this, Government were advised as follows:—"The rule purports not to prescribe a fine for the infringement of any particular by-law, but generally for the evasion of payment of taxes.

"2. If there is any rule in force under which it is obligatory on persons liable to taxation to submit returns or make declarations in order to facilitate assessment, it appears competent to the municipality to impose a fine for its infringement. But the by-law imposing the fine should distinctly refer to the mandatory rule which it is intended to enforce.

"3. By implication, no doubt, the proposed by-law prohibits 'the evasion of payment of taxes,' but in order to comply with the section there must be an express prohibition or order before a penalty can be prescribed for disobedience.

"4. Moreover, I think, that even if such prohibition can be inferred, a general order against the evasion of taxes is so vague that it ought not to be sanctioned. It creates too much uncertainty in many cases as to the nature of the offence and leaves too much latitude to the officer whose duty it is to institute prosecutions. In regard to many kinds of taxes it would be most difficult to say what constituted evasion, and the liability of the delinquent to punishment would depend in a great measure on the Magistrate's tendency of mind.

"6. If the municipality find the provisions of section 84 (now 161 (2) insufficient to prevent the evasion of taxation, it can frame a rule prescribing the submission of returns and declarations in order to show each person's liability to taxation and imposing a penalty in case they are not furnished at the time fixed: but probably it will be found impossible to deal with all taxes in one rule as the circumstances under which imposts so different as house-tax and octroi can be evaded must be very dissimilar. (G. R. 2512 of 25th Aug. 1887, G. D.)"

See section 63 (3) as to certain returns to be furnished for house, &c., assessment.

Evasion of Octroi.—See section 77 (2).

19 **Octroi by-laws.**—See Orr's Model By-laws, Chapter X.—This is taken partly from the Panjab Act, section 143 (*f*) and (*g*), amplified to include refunds.

These by-laws are to be sent in when submitting to Government for sanction the proposal for imposition of octroi. (sec 75.)

20 **Government orders.**—See Appendix, Part II. The Government of India insist that the regulation of octroi be under the strictest control and the refunds be given, not only on the original articles exported, but on things manufactured from material that has paid octroi.

"*Imported—meaning of.*—A rule provided for the levy of octroi duty on certain articles "when imported within the Municipal District." A person who brought certain dutiable articles within the municipal limits having refused to pay the duty on the ground that the articles were in the course of transit to Bombay and simply passed through the municipal limits and they could not therefore be said to have been "imported within the Municipal District:" an application was made to a Magistrate for the recovery of the duty under section 84 of the Bombay District Municipal Act.

Held, that the word "imported" in the rule must be given its ordinary meaning. As soon therefore as the articles passed within the limits of the municipality, they were

imported, that is, brought within those limits from a place without its boundaries. If the person importing such articles, exports them, whether that is done on the same day or at some other more distant time, his only remedy is to claim a refund of the duty paid. He cannot claim exemption from payment of duty on this account. (*Imp.* v. *Rahim Bhanji* Bom. H. C. Cr. Ruling No. 18 of 1897.)

21 **Water-supply.**—See Orr's Model By-laws, Chapter XI.

This is on the lines of section 461 (*b*) of the Bombay City Act. The provisions of this clause have been amplified so as to afford more adequate mea s for providing against the pollution of water-supplies, &c.

See sec. 54 (i) (j) as to duty of municipalities to provide a proper supply of water. Also section 134 as to fouling water.

Under the Bombay Town Planning Act provision may be made for a water-supply.

22 **Bathing places.**—See section 133; also Orr's Model By-laws, Chapter XII.

23 **Sanitation.**—See notes to section 54 (*c*); also Orr's Model By-laws, Chapter XIII.

24 **Conservancy.**—The recommendation of the Sanitary Commissioner that each Councillor should supervise the conservancy of a section of the town in which he holds office, should be brought to the notice of all Municipal Boards. The adoption of it would not fail to have a beneficial effect. (G. R. No. 3199 of 5th Sep. 1884, Gen. Dep.)

25 **Dead animals.**—See section 52, proviso, and 141 as to extra mural places for this purpose.

Panjab Act, section 100, provides that whenever any animal in the charge of any person dies, otherwise than by slaughter, either for sale or for some religious purpose, that person shall, within 24 hours, either—(*a*) convey the carcass to a place (if any) fixed, or (*b*) give notice to the municipality which shall cause it to be disposed of. Failure to do this shall be punishable with a fine of Rs. 10.

With respect to the disposal under (*b*) the municipality may charge such fee as may be prescribed by law.

"For the purpose of this section the word "animal" shall mean all horned cattle, elephants, camels, horses, ponies, asses, mules, deer, sheep, goats; swine, and other large animals."

26 **Temporary occupation of and temporary structures on a public street.**—Permission may be given for this under section 122 (4), and under section 70 (1) the municipality may charge a fee for such permission. See Orr's Model By-laws, Chapter XIV.

Leasing of portions of public streets.—"In my opinion the proposed rules cannot legally be sanctioned by Government.

"3. The proposals amount to this. The municipality have fixed the line of their public streets for the future. They cannot work up to those lines by removing all the projections beyond those lines at once for want of funds to pay the necessary compensation to private owners. Therefore, they propose to adopt a temporary inner line for their streets and to let out on hire the portions of the streets between the temporary inner and permanent outer lines to the adjacent house-holders until they shall have obtained by the rent so obtained or otherwise the necessary funds to extend the streets to the outer lines.

"4. Now a corporation has no greater powers than the Legislature has granted to it and public streets are vested in the municipality under section 50 (*f*) of the District Municipal Act, 1901, on trust for the purposes of the Act. What those purposes are must be gathered from a strict interpretation of the provisions of the Act regarding public streets. Those provisions appear to be as follows. It is the duty of the municipality under section 54 (*f*) and (*i*) to remove obstructions and projections from and to alter and maintain public streets. It is further lawful for the municipality under section 90 (1) to widen, open, enlarge or otherwise improve public streets and under section 92 to set back and *acquire* on payment of compensation *private* houses and lands which project beyond the regular line, or the line determined upon for the future, of public streets and under section 93 to *alienate* portions of *public* streets beyond such lines by allowing any building to be set forward up to such lines in order to improve the lines of public streets. The municipality may under section 113 (1) *allow permanent aerial* projections over public streets, which on the principle of the owner of the land being owner of the perpendicular column of air over it are *encroachments* on *public* streets and under section 122 (4) may *allow temporary surface* occupation of or *encroachment* on *public* streets for *four days*. The municipality may under section 113 (3) *remove aerial or surface*—the clause in my opinion clearly includes both—*encroachments* on *public* streets made before or after the birth of the municipality and under section 122 (2) *remove* perhaps *aerial* and certainly *surface*—the clause in view of the new clause (5) would probably be held to include

both—*encroachments* on public streets made after the birth of the municipality. It appears that section 113 (3), so far as subsequent encroachments are concerned, overlaps section 122 (2). It is clear that none of these provisions authorize the municipality to lease permanently or even for substantial periods portions of the public streets pending the extension of the streets to the regular lines or lines determined upon for the future.

"5. In fact it was, in my opinion, never the intention of the District Municipal Act that the municipality should use the public streets vested in them otherwise than as public streets subject to due provision for improvement of such streets and for licenses for harmless aerial projections and strictly temporary ceremonial booths or similar purposes. Section 110 (2) has been urged as giving the municipality power to permit buildings over the gutters and drains of public streets, but with due deference to the opinion of my predecessor I think it gives no such power. It is not dealing with public so much as private rights. It does not say the municipality may permit buildings over the gutters of public streets. It merely limits the rights of private land-owners to build over municipal drains, such for instance as drains made on or under their private lands under the power vested in the municipality by section 100 (1). It would not be necessary to provide that private land-owners must not build on land that is not theirs such for instance as the gutters of public streets. The general law provides that.

"6. I respectfully suggest that the proper course to be adopted by the President of the Ahmednagar Municipality is to draw out a scheme for the gradual improvement of the public streets up to regular lines as contemplated by section 92 of the Act and have the lines accurately shown on the municipal map—the schedule submitted by the President does not determine a straight centre line for the streets and would not be effectual—to gradually set back under that section private properties which project beyond such lines by paying compensation out of the funds to be obtained by allowing under section 93 private properties which stand back from such lines to be brought up to them, and to insist on the summary removal of all projections which are not private property but are encroachments on the public streets under sections 113 (3) and 122 (2). The process might be quickened by prosecuting obstinate cases under sections 113 (2) and 122 (2). If considered desirable the duties of carrying out the scheme might be delegated to the Managing Committee by rules under section 46 (*a*). If the municipality fail to do their duty the remedy is contained in Chapter XII of the Act. The Karachi municipality have, I believe, drawn up and are carrying out a similar scheme.

"7. The question of the fees leviable under section 70 for permission given for aerial projections under section 113 (1) or for temporary surface occupation of public streets under section 122 (4) can be settled under rules made under section 46 (*i*) with the sanction of Government and the conditions under which such permission shall be granted can be regulated by by-laws made under section 48 (*n*) after previous publication and with the sanction of Government. But such rules and by-laws are a minor matter and the President will no doubt find no difficulty in drafting them after elimination of the proposals for granting long leases of public streets contrary to the municipal Act. (Opinion of Legal Remembrancer quoted in G. R. 4364 of 24 July 1906 G. D.)

In regard to these same rules the following was the opinion of the Honourable the Advocate General.—"I am of opinion that the by-laws proposed by the Collector of Ahmednagar under section 48 (*n*) of the District Municipal Act are not free from objection from a legal point of view.

It appears from the heading that the by-laws are intended to deal with encroachments on public streets and purport to legalise certain encroachments if made by special agreement. The encroachments when made by special agreement would apparently remain in the streets for an indefinite period until the land occupied by them is required by the municipality for a public purpose. It is clear that section 48 (*n*) only authorises by-laws regulating details regarding buildings and temporary structures on public streets and aerial projections over public streets. Nor can any authority for the proposed by-laws regarding permanent or quasi-permanent encroachments be derived from section 48 (*n*), for by-laws must be not inconsistent with the Act, and it is to my mind perfectly clear that the duty of the municipality with regard to streets is to improve them if possible and not to obstruct them by permitting encroachments which are rendered penal by section 122. I observe that the Collector of Ahmednagar in his letter No. 354 of 1906 (paragraph 2) says that nothing is said in the proposed rules about leasing of public streets for long periods and that the rules are concerned with buildings over gutters and will be inoperative in respect of buildings over streets. These statements appear to overlook the heading to which I have referred, and even if the heading were omitted there is nothing in the rules to limit that operation to gutters.

Except in so far as they relate to aerial projections, I think the proposed rules inconsistent with the Act are rule II, if the strip therein referred to is part of a public street, and rules III and IV if the drains or gutters are in public streets.

The proposed provisions if confined to aerial projections and temporary structures should be made by by-law under section 48 (*n*) and not by rule under section 46 (*i*)." G. R. 1080 of 15 Feb. 1907 Gen. Dep. accordingly refused sanction to the rules.

These rules are again the subject of review by the Legal Remembrancer in G. R. 3076 of 16th April 1908, G. R. which approves of a redraft of rules under section 46 (*l*) as to the fees to be charged for projections over public streets and by-laws under section 48 (*l*) (*p*) (*u*) for grant of permission to erect buildings over drains. See notes to section 46, 110 and 113.

27 **Projections over public streets.**—Written permission for these may be given under section 113 (*i*) which specifies the various kinds of projections and the extent to which they may be permitted; and under section 70 a fee may be charged according to rules under section 46 (*i*).

28 **Providing for streets.**—See Orr's Model By-laws, Chapter XV.

29 **Ventilation.**—See Orr's Model By-laws, Chapter XVI.

This is new and is taken from the Bombay City Act, section 461 (*d*).

Power to restrict height of building.—The following by-law was framed under that section. "A person who shall erect a new building which abuts on a street of not less than fifty feet in width, or any part of which is within a distance of half the width of such street from a street of less width than fifty feet, shall not, without the written permission of the Commissioner, erect such building to a greater height than one and a half times the width between the point at which such building approaches nearest to the street and the opposite side of such street. Provided that nothing herein contained shall debar any person from building up to the full height of any building (belonging to himself) which has stood within two years on the same site, and on which he has not been precluded from building by any injunction or order of a Court."

Held that the municipality had power to make a by-law restricting the height of a new building erected on a site which had been previously built upon. (I. L. R., 22 Bombay 980. *Municipality of Bombay* v. *Sunderji*; Bom. H. C. Cr. R. No. 50 of 1st Dec. 1897.)

Preservation of air spaces.—G. R. 465 of 20th January 1898, Rev. Dep., approved of certain proposals made for the selection in all towns where necessary of open spaces to be preserved to the public use.

G. R. 8181 of 28th Dec. 1900, Rev. Dep. directed that these proposals should extend not only to (1) towns in which a City Survey has been introduced, but (2) to all those in which, in view of the existing congestion or prospective increase or population, they are desirable.

These matters, however, can now be efficiently disposed of under the Bombay Town Planning Act, 1915 (Bom. I of 1915) which makes provision for such matters.

30 **Surveyors.**—See Orr's Model By-laws, Chapter XVII.

The Bom. City Act, Chapter XII, contains provisions for licensing of surveyors and plumbers.

Most large City Municipalities are now undertaking scientific systems of drainage and water-supply, and unless fittings and appliances are kept in proper order, not only may there be great waste of water and the soil become water-logged, so much so that the public health may be endangered, but sewer-gas and disease may be introduced into houses. Experience shows that only competent workmen should be allowed to interfere with such fittings and appliances. Again in City Municipalities, plans must be submitted in many cases to the municipality to enable them to judge whether certain proposals for the construction of or alteration in buildings are sanitary, and calculated to cause no obstruction to the neighbourhood. Consequently, unless the municipality be given power to license surveyers, wholly inadequate and inaccurate plans may be presented to the municipality and the law be made of none effect.

The C. P. Act, sec. 84 (*c*), provides for rules for licensing, controlling and regulating the practise of brokers, measurers, and weighmen practising their calling in public places within the municipality.

31 **Drainage.**—See Orr's Model By-laws, Chapter XVIII.

This is new and is taken from the Bombay City Act, section 461 (*a*). Such by-laws are absolutely necessary for towns where a scientific system of drainage is being carried out.

The Bombay Town Planning Act makes provision for a scheme for drainage inclusive of sewerage and of surface drainage and sewage disposal.

32 **New streets and buildings.**—See Orr's Model By-laws, Chapter XIX.

Clause (*n*) *supra* provides for by-laws regulating the structure &c. of new buildings for purposes of stability, fires and health.

33 **Unwieldy traffic.**—See Orr's Model By-laws, Chapter XX.

This is the first attempt in this Presidency to deal with a growing mischief. It appears that hitherto there was no legal enactment in force in this Presidency under which a satisfactory check could be placed on the transport of engines and heavy articles of machinery, so as to prevent or minimise injury to roadways and bridges and obstruction of traffic.

Would this clause justify rules with regard to the use on roads of those boards used by horse-trainers? Does the word vehicle, section 3 (17), apply to such? Apparently not, as the term applies only to "wheeled conveyances" and the suggestion made by Sir Evan James to amend the definition, so as to include the above, was not adopted.

See Halsbury's "Laws of England" Vol. XVI "Highways, Streets and Bridges, Part XI. Excessive weight and extraordinary traffic, paras. 172-180."

34 **Municipal administration.**—See Orr's Model By-laws, Chapter XXI.

35 **Fines for infringement of by-laws.**—This paragraph should have been numbered (2) so as to be sub-section (2), and the subsequent sub-section figures altered accordingly.

Under the old Act there was no limit fixed for the fine.

A by-law implies power to impose a penalty. (Maxwell on Interpretation of Statutes, p. 320.)

This clause does not authorise any fine for a continuing breach of a by-law.

Section 161 provides "for the punishment of any persons offending against the provisions of this Act, or of any by-law thereunder." The proviso also refers to "an offence" under the Act.

The abetment of the breach of a by-law would be punishable. (Cf note 3 to section 161.)

There can be no doubt that the criminal Courts, when called upon to give effect to a by-law of a penal character, have power to scrutinise the by-law and to determine whether it is within the authority of *quasi* legislative character delegated to the municipal body which framed it. They have also power to declare a by-law to be void as being beyond the scope of that authority, if the by-law is unreasonable. This is the accepted doctrine of the English and American courts, and it has been accepted in this country also in the case of *Reg.* v. *Yenku Bapuji*, 8 Bom. H. C. Reports, Cr. Cases, p. 39. (*Buta Mula* vs. *Empress*, Chief Court Case No. 136 of 1879, Revision Side, Panjab.)

Under the Panjab Act, section 145, the fine may extend to Rs. 50 and for a continuing breach to Rs. 5 per day; and in lieu of, or in addition to such fine, the Magistrate may require the offender to remedy the mischief so far as he can.

"*By-laws cannot empower municipalities to adjudicate*:—(2) The imposition of reasonable penalties, &c., merely gives municipalities the power to make a general tariff of penalties for breaches of the by-laws, and not a power to adjudicate, or even to determine who shall adjudicate, that any person in particular has committed such a breach.

"(3) Accordingly a rule that the Managing Committee should impose penalties for various breaches of rules at their discretion after due investigation, and apply to a Magistrate having jurisdiction for their enforcement was held to be illegal, as a Magistrate only can adjudicate such cases."

It is not competent to a municipality, even in its rule framed with the sanction of Government, to provide for the levy, under its own authority, of double duty by way of fine from any body attempting to evade payment of duty or toll, and what cannot be done by a rule certainly cannot be done by a resolution of the Commissioners. Under this section the municipality can only prescribe a fine or penalty for the violation of some by-law, and all prosecutions for the enforcement of a fine or penalty must be before a Magistrate. Neither the infliction of a penalty for evading payment of duty, nor the recovery of such penalty by municipality of its own authority is legal. (G. R. No. 2522 of 19th July 1884, Gen. Dep.)

Imprisonment in default of payment of and mode of recovery of fines.—Section 26 of the General Clauses Act provides:—

"26. Section 63 to 70 of the Indian Penal Code, and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines, shall apply to all fines imposed under any Bombay Act or any rule or by-law made under any Bombay Act, unless the Act, rule or by-law contains an express provision to the contrary."

Act not a continuing offence under an ultra vires by-law limitation runs from date of offence: by-law must conform to Act.—Section 599 (18) Calcutta Act provides that a by-law

made under it may provide that a breach of it shall be punishable with fine which may extend to Rs. 10, for every day during which the breach continues *after receipt of written notice to discontinue the breach.* The by-law actually framed provided a penalty for a breach which only arose after the notice, not from any subsequent notice, hence it went further than the Act and was so far *ultra vires.*

When the municipality gave notice for removal of certain obstructions, and the notice not being complied with, criminal proceedings were taken 3 months after the date of the notice, for an offence under the by-law, *Held,* that the by-law did not create a continuing offence, and the complaint having been made after the 3 months limitation provided by section 631 of the Act, the proceedings were barred. A by-law must confirm to the provisions of the enactment under which it is made.

Quare.—The 3 months should run from the date of "the commission of the offence" and not from date of notice. (*Narayan Chandra Chatterjee* vs. *Corporation of Calcutta* (1909) 37 *C.* 545, *O. C. L. J.* 623; 14 *C. W. N.* 614; 1909. 4 *Ind. Cas.* 259.)

Where an old Act provided a continuing penalty for an offence as an *alternative* punishment, it was held that the municipality could not frame a rule making the continuing penalty an additional punishment. (*Reg.* v. *Jagannath that,* (1868) 5 Bom. H. C. R. Cr. Ca. 103.)

36 **Publication of draft by-laws.**—Sub-sections (2) and (3) are an exact re-production of section 34, Bom. II of 1884.

The suggestion that the publication should also be by "beat of battaki or drum" in order that persons who could not read should be informed of the proposals, was not adopted by the Legislative Council. There is however no reason why this should not be done by a municipality under the present provisions of this section which are very wide, "in such manner as shall be sufficient."

In view of the following section of the General Clauses Act this sub-section, as also sub-section (3), are unnecessary, the words "after previous publication" being inserted in sub-section (1) after the words "by-laws."

"24. Where, by any Bombay Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely,—

(*a*) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby;

(*b*) the publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the Local Government prescribes;

(*c*) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(*d*) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(*e*) the publication in the Bombay Government Gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

37 **Rules not invalid, because in some details different from the draft published rules.**—Certain draft rules were published in the local Gazette. They were considered by Government in connection with such criticisms and objections as had been then presented and finally a set of rules was published in the Gazette as having been made under a certain section of the U. P. Municipalities Act, 1900, wherein in place of the words "District Magistrate" the words "a competent Court" were substituted. *Held* that such rules were none the less valid because in some details they differed from the draft rules previously published. (*Gur Charan Das* v. *Har Sarup,* I. L. R. (1912) 34-A 391.)

Rules and by-laws to be printed and sold.

49. The rules and by-laws for the time being in force shall be kept open for public inspection at the municipal office at all reasonable times, and printed copies thereof and of this Act in the vernacular language of the district, and in City Municipalities in English as well as in the vernacular, shall be kept on sale at cost price.

Printed copies of Rules and by-laws.—This is section 36 of the old Act, very slightly altered. The new words provide for printed copies of the Act also being available, as every facility should be given to rate-payers to know their obligations and duties. In City Municipalities the rules and Act are to be in English as well as in the vernacular. The price is to be "cost price," not only "a reasonable price" as in the old Act, as the former expression is more accurate and more in the direction of protecting the rate-payer.

The omission to have the rules translated into the vernacular or to keep printed copies of them for sale, do not affect their validity. (*Queen Empress* v. *Bahadur Shah.* Bombay H. C. Cr. R. No. 37 of 1892.)

CHAPTER V.—MUNICIPAL PROPERTY AND FUND.

50. (1) Every municipality may acquire and hold property both moveable and immoveable, whether within or without the limits of the municipal district.

[1]Power to acquire and hold property.

(2) All property of the nature hereinafter in this section specified, and not being [3]specially reserved by the Governor in Council, shall be vested in and belong to the municipality, and shall, together with all other property, of what nature or kind soever, not being specially reserved by the Governor in Council, which may become vested in the municipality, be under their direction, management and control, and shall be held and applied by them as [4]trustees, subject to the provisions and for the purposes of this Act; that is to say—

[2]Property vested in the municipality.

(*a*) All public [5]town-walls, gates, markets, slaughter-houses, manure and night-soil depôts, and [7]public buildings of every description.

(*b*) All [8]public streams, [9]tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water-works, and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank or well.

(*c*) All public sewers and drains, and all sewers, drains, tunnels, culverts, gutters and water-courses in, along-side or under [10]any street, and all works, materials and things appertaining therto, as also all dust, dirt, dung, ashes, refuse, animal matter, or filth, or rubbish of any kind collected by the municipality from the streets, houses, privies, sewers, cesspools or elsewhere.

(*d*) All public lamps, lamp-posts, and apparatus connected therewith, or appertaining thereto.

[11](*e*) All lands transferred to them by the Secretary of State for India in Council, or by gift or otherwise, for local public perposes.

[12](*f*) All public streets, and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements and things provided for such streets.

1 **Municipal property.**—This sub-sec. (1) is taken from part of sec. 15 of the old Act of 1884. No provision existed in the old Act for the acquisition of property "without" municipal limits. This corresponds with sec. 87 of the Bom. City Act.

See sec. 41 and Part II, Appendix B, as to acquisition of land; and proviso sec. 52 as to restricted purposes "without the limits."

Property.—See definition note 2 section 40.

2 **Property vested in municipality.**—The whole of this sub-sec. (2) is a re-enactment of sec. 17 of the old Act of 1873, and corresponds almost exactly with the Panjab Act, sec. 76.

Improvements made by municipality to private property does not make it municipal.—In a dispute between the municipality and the Inamdar of the village regarding the right of the former to extend the foundations of a building into a lake or tank situated in the village, but not within municipal limits. *Held* that though the municipality had ever since its establishment expended large sums of money on cleaning the lake and making improvements with the assent of the Inamdar, still as he had all along been in enjoyment of his rights over the lake with which the municipality never interfered, the lake was the Inamdar's. *Held*, also, following *Pemraj* vs. *Narayen*, (I. L. R., 6 Bom. 215) that it was not open to the municipality under the circumstances to set up the *jus tertii*, the title of Government to this lake. (*Manohar* vs. *Dahore Municipality* P. J. 1897, p. 15.)

Vested property losing its original charecter.—Property so vested in a municipality does not revert to Government if it loses the character it had when it first became so vested, except where the transfer has been made on special conditions. Section 90 (1) authorities the sale of land no longer required for a public street. See note 9 *infra* and note 1 to sec. 122.

Lands dedicated to a public purpose, how far vest in a municipality.—See this point which is fully discussed in *Chairman of the Howrah Municipality* vs. *Khetra K. Mitter*, (I. L. R. (1906) 33 Cal. 1290; (1906) 10 C. W. N. 1044.)

There the defendant had allowed the Hindu public of the neighbourhood to use the land in question (which was situate in the municipal area) as a burning ground, without any intention to make an absolute gift of the land. The buildings thereon had been constructed by defendant's ancestors, and were repaired from time to time by defendant at his cost. The municipality had however absolute control over the management of the burning ground and employed suitable persons to perform the duties contracted with the cremation of the dead, conservancy &c. and it even spent some money on a stair case from the ground to the river.

The land was subsequently acquired under the Land Acquisition Act for a railway and consequently ceased to be used as a burning ground.

Held that there was only a dedication of the *use* of the land for a burning ground, and no relinquishment of the ownership by defendant. The dedication having ceased to operate in consequence of the acquisition by the railway, the land reverted to defendant and the municipality had no claim to it except for the money spent fn the stair case.

If land is dedicated for cemetries or burial purposes, and there is subsequently an abandonment, the property so abandoned reverts to the dedicator or his heirs. *Vide Campbell* vs. *City of Kansas* (1890) 10 L. R. A. 593; *New Ark* vs. *Watson* (1894) 24 L. R. A. 843; *Board of Commissioner* vs. *Toung*, (1893) 8 C. C. A. 27, S. C. 59, Fed. Rep. 96; *Board of Education* vs. *Edson* (1868) 98 Am. Dec. 114. *Manmatho Nath* vs. *Secretary of State* (1897) I. L. R. 25 Cal. (P. C.) 194; S. C. L. R. 24 I. A. 177 distinguished. See also note 12.

Lands not vested in a municipality.—A municipality has no right to trees growing on Government land not transferred to it: *held* therefore that in case of misappropriation of such trees a suit should be filed against the municipality.

Trespass on land not vested in municipality, not punishable.—The accused drove a cart over Government waste land in respect to which the municipality had put up notices prohibiting cart traffic. The accused was convicted of criminal trespass on the complain of the Municipal Secretary; *Held* that the conviction was bad and illegal. The ground was not a street, as defined in section 2 of the Municipal Act, and was not vested in the Municipal Committee as such under section 78 (*g*) of the Act, and it did not appear that the Government had transferred the land to the Committee for local public purposes under section 78 (*f*). Consequently trespassing on the land in defiance of the municipal notices did not involve any of the intentions necessary to constitute the offence of criminal trespass.

The Madras Anonymous Cases Nos. 140 and 151 of 1870, 5, M. H. C. R. App. 38 relied upon.

If the Government itself had issued such notices, the intention to commit the offence of disobeying the orders would presumably be inferred. If the notices were good, the accused could hardly be held to have had the necessary criminal intent, unless it was proved that he was aware of the prohibition. (*Emperor* v. *NagaU. Thit*, U. B. R., 1909, II Penal Code, p. 25; 1910, 6 Ind. Cas. 826.)

Open land over which persons pass and on which at certain times they erect sheds for visits to an idol is not vested in municipality.—The words "not being private property and not being maintained by Government or at the public expense" in section 30 of the Bengal Municipal Act refer only to bridges, tanks, &c., and not to the words "all roads, including the soil."

Whereas certain land is kept open for the purpose of allowing people generally to pass over it to visit a religious car preserved in a shed on the road, and the people pass over by the implied permission of the shebaits to pay pronamic to the idol in the car, and for a certain time in each year traffic is entirely stopped and the land is covered by temporary sheds erected by shopkeepers from whom the shebaits collect tolls:—*Held* that the public have no right of way as of right over the open land, which is not, therefore, a road as defined by section 6, clause (13) of the Municipal Act, and is not vested in the municipality under section 30. (1911, 9 Ind. Cas. 562, *Kumna Bandho Das* v. *Kishori Lal.*)

3 **Government reserved property,**—The words "not being specially reserved by the Governor in Council" are designed to cover a number of Government buildings which have always been reserved, as well as to enable Government from time to time to reserve other property, such as interesting archiological remains in any town which might otherwise be destroyed.

The Act does not prescribe the manner in which and the time within which Government should exercise its powers of reservation.

All buildings of any of the following descriptions, together with all their appurtenances, are exempt from the operation of this section:—(1) Government Offices including Post Offices. (2) Court Houses. (3) Police Stations and all buildings under the control of the Police, Chauries, Jails, Civil and Criminal, except Chaukies constructed from municipal Funds. (4) Churches. (5) Hospitals and Dispensaries, except dispensaries constructed from Municipal Funds. (6) Public Schools, and other buildings under the control of the Educational Department. (7) Travellers' Bungalows and such Dharamsalas as may be especially exempted. (8) Forts. (9) Ancient ruins of forts, churches, or other public buildings (10) Jetties, piers, &c., under the control of the Customs Department. (11) and all buildings belonging to Government as distinguished from those specified in this section, as meant for the accommodation of the Local Public* (G. R. 3058 of 7th Oct. and 3571 of 29th Nov. 1875: No. 1464 of 10th May 1876 and 1338 of 24th April 1878.)

Special reservations have also been made of particular buildings and of portions of provincial roads and trunk roads passing through municipal limits in various places.

No Government building is to be placed at the disposal of a municipality without the consent of the Executive Engineer of the District and the sanction of Government in the P. W. Dep. (G. R. 2211 of 22nd March 1889, Rev. Dep.)

The Panjab Act, sec. 76, provides that the Local Government may make any special reservation.

The Madras Act, secs. 23 and 24 (3), gives power to Government to exclude any street, or sewer, drain, drainage work, tunnel and culvert from the operation of the Act.

As such reserved property is not vested in a municipality, the municipality would not be liable to repair it.

4 **Held and applied as trustees.**—As such they are bound to repair and keep in repair their property, and are liable for any injury caused by non-repair. See *Crowhurst* vs. *Amersham Burial Board*, L. R. 4 Ex. D. 5; *Fletcher* vs. *Rylands*, L. R. 2 C. P. 239; *Merrey Docks* vs. *Gibbs*, L. R I. H. of L. 93 p. 110; *Gray* vs. *Pullen*, L. J. 34 Q. B. 265; *Borough of Bathurst* vs. *Macpherson* L. R. 4 App. Ca. 256.

As to the liability of a municipality, see note 1 sec. 54; and of Councillors, see note 1 Sec. 42.

5 **Town-walls.**—A municipality has no authority to demolish any portion of the town walls without obtaining the previous sanction of Government. The Collector should report the matter to Government directly any such resolution is passed by the municipality. It is

* This exemption appears from the preamble of the G. R. to apply to buildings the property of Government, but used as dwelling houses of Government servants.

for Government alone to decide whether any town is to remain enclosed or fortified, and how the land occupied by existing ramparts or ditches is to be disposed of. The Commissioner should take care that no invasion of the rights of Government is made by any municipality. In such case no appropriation of the land, if it should have been made, can be upheld.—(G. R. No. 634, March 3rd, 1871, Gen. Dep.)

Municipalities have no right to the sites of public town-walls or bastions.

7 **Public buildings**.—It was said that this term is too wide, and might include temples, mosques, and churches, but as no difficulty had arisen on this point under the old Acts, and it was not anticipated that any municipality would venture to interfere with buildings of this kind, no amendment was made.

In the exactly corresponding clause (76 (*a*)) of the Panjab Act, the words are "public buildings of every description which have been constructed or are maintained out of the municipal fund."

When under the old Act of 1873 the question was raised whether Court houses, &c., would be "public" buildings, *held* that the word 'public' is used in the Act in its widest sense of "things which belong to the sovereign power of the State, but the use of which is common to all its subjects as well as to strangers to whom the privillege may be communicated," and would therefore not include Government buildings such as Collectors' Kacharies Court-houses, &c.

Municipality no right to soil under public buildings.—The municipality has no property in such soil. The grant of the building carries with it the right to occupy the soil for such building, but gives no further interest therein. See also note 12.

Municipal buildings are to be reserved for public purposes, and *nautchès, Kirtans*, or religious ceremonies should not be held or performed in them. (G. R. 2044 of 26th July 1871.)

School-buildings:—On the question being raised whether a school building erected within municipal limits, but at the entire cost of the District Local Fund, vested in the Municipality or District Board, G. R. No. 2233 of 31st Dec. 1884, Edn. Dep , decided in favour of the District Board, but thought that the disposal of such buildings should be a matter of arrangement between the District Board and the municipality to which the Primary School is transferred.

School buildings which are the property of Government and of which the use has been granted to Local Fund Committees or transferred to them by the Educational Officers, may now be used by the municipal Committees upon the same terms, which presumably are that the municipality shall keep the buildings in repair and be allowed to hold them so long as they are applied to the purposes of primary education. Buildings constructed out of Local Funds and the absolute property of the District Board must be dealt with as directed in G. R. 2223 of 31st Dec. 1884. (G. R. 747 of 21st April, 1885, Educ. Dep.)

With regard to the transfer of Educational buildings within municipal limits it may be added to the previous orders contained in G. R. No. 747 of 21st April, regarding buildings the property of Government, that the Director of Public Instruction shall be authorised to impose such conditions upon their use by municipalities as may be necessary in special cases. (G. R. 1244 of 30th June 1885, para. II—Educ. Dep.)

Sites of school-buildings transferred to municipalities.—If the building was constructed by Government, the site vested in Government, and was held by the municipality on the same terms as those on which the building was transferred; the terms of such transfer being sufficiently stated by a Government resolution.

If the building was erected by the Local Board, the transfer of the site would in most cases have been made with the formal sanction of the Commissioner under sec. 9 of the Local Boards Act. Where such sanction had been omitted to be given, Government in G. R. 377 of 4th Feb. 1893 concurred in the following views expressed by Mr. Spence:—

"2. The only other sites are those on which the buildings have been constructed without the formal sanction of Government having been obtained. There must, the Commissioner thinks, be few such cases as it was formerly the practice to obtain the Commissioner's sanction to the transfer of the lands to Local Boards. But in cases in which neither the sanction of the Commissioner nor of Government has been obtained, all that remains to be done is for the omission to be now supplied and the Commissioner can then formally sanction the transfer under section 9 of the Local Boards Act.

"The Legal Remembrancer expressed an opinion that transfers of the rights of District Boards in and over school sites to municipalities should be effected by formal agreements, but suggested that if this had not been done in the past and its adoption in the future would be a trouble, a new section should be added to the new Act as follows:—

"It shall be competent to the Governor in Council to declare (?) by a notification in the *Bombay Government Gazette* that any site used or intended to be used for a school-house, the

possession of which has been or shall hereafter be transferred to any municipality, shall be deemed to vest or to have vested from a date specified in such notification in such municipality subject to such conditions and changes as may be specified in such notification in respect thereof, and thereupon such site shall be deemed to have vested accordingly and the conditions and changes so specified shall be deemed to be and from the date specified to have been binding on the Local Board and municipality respectively."

Mr. Spence thought the provision would be useful in meeting doubtful cases, and Govt. directed its insertion in the Bill, but for some reason it has been omitted from the Act.

8 **Public Streams**:—Section 37 of the Land Revenue Code only declares the right of Government to the beds of rivers and streams which are not the property of individuals or of aggregaties of persons legally capable of holding property, and would not therefore affect section 17 (*b*) of the Act of 1873, if it vested such beds in municipalities. But the words used in section 17 (*b*) of the last named Act are 'all public streams,' and do not include either the banks or the beds of such streams, which, as section 17 now stands, do not vest in municipalities, unless transferred to them by Government, under clause (*e*) of that section. (G. R. 4551 of 6th June 1885, Rev. Dep.)

The word 'Stream' means a current of water, and does not seem to include the bed, while the word "Tank" primarily means the basin itself intended for the storage of water.

9 **Tank**.— Report from the Acting Remembrancer of Legal Affairs, published with G. R. 6111 of 9th September 1887, Rev. Dep.

"Webster's Dictionary the word "Tank" is said to mean "A large basin or cistern; an artificial receptacle for liquids." In India the word, I think, is ordinarily applied to basins in the earth constructed or adapted for the storage of water.

According to section 17 all public tanks and also any adjacent land appertaining thereto in municipal limits are vested in and belong to the municipality

"Under this section I think it is clear that the bed of any such public tank belongs to the municipality. And when once the soil has so vested I see nothing in the law to make it cease to be municipal property on its nature being altered and its ceasing to be the bed of a tank.

"I think then the test to be applied to cases like that which has arisen is whether the land has at any time since the passing of Act VI of 1873 and since the constitution of the municipality been a public place for the storage of water. If it has, then it has vested in the municipality, and remains its property irrespective of the use to which it is at present applied. If on the other hand it had permanently dried up before there was in force any law or order of Government to vest it in the municipality, it has apparently never so vested, and remains the property of Government.

"It is of course difficult to lay down any invariable rule under which it can be determined whether an old basin that holds water only for a week or two in the rains continues to be a tank or otherwise. It appears to be a question of degree. There must be some point when the land ceases to be a "tank," and it is hard to say with precision exactly when that point is reached. But I am inclined to think that so long as an old basin known to have been formerly constructed for the storage of water remains capable of holding water and does usually hold it at some period of the year it remains a tank.

"And if the bed of a tank is municipal property, I do not think it is liable to assessment when cultivated or otherwise used. Section 45 of the Land Revenue Code, no doubt, makes all land liable to land revenue, unless wholly exempted under the provisions of any special contract or any law for the time being in force. But looking to the Municipal Act, sections 17 and 18, of which the latter declares that all rent of Municipal property shall go to the municipal fund, I think it must be held that municipal lands are implied by the intention of the Municipal Act exempted from land revenue and must be considered "alienated" *i. e.*, transferred so far as the rights of Government to payment of rent or land revenue are concerned and therefore not liable to assessment under section 52 or to the penalties provided by section 61 of the Land Revenue Code.

"As to who is to determine whether the bed of a disused tank belongs to Government or not, I think in all cases it is in the first instance for the Collector to decide whether any piece of land is or is not liable to assessment. Any corporate body or individual dissatisfied with his decision can take the matter into the Civil Court in the districts in which such procedure is allowed under section 5 of Act X of 1876 as amended by Act XVI of 1877: and in other districts can make the ordinary appeals allowed by the Land Revenue Code."

In the corresponding clause of the Panjab Act, instead of the "words "tanks * * * and other articles," the words used, are "springs and works for the supply storage and distribution of water for public purposes."

All public tanks and wells and land adjoining them vest in the municipality; wherefore when the question was whether Government or the municipality should sue for the ejectment of a Byragi occupying one of such wells, *held* that if the Byragi had taken possession and exercised ownership, he should be sued by the municipality, for ejectment within the period of limitation, *i. e.*, 12 years from his occupation, and not by the Government. But if he was in the position of a tenant by sufferance a reasonable notice would suffice.

10 **"Any street."**—See sec. 3 (12) for definition. In the old Act this was "any *public* street."

11 **Lands transferred by Government.**—The Secretary of State is substituted for "Governor" in the old Act.

By rule 11 under section 214, Bombay Land Revenue Code, the occupancy of any land shall not be granted revenue free for any of the following purposes (1) for sites for the construction at the cost of Local or Municipal funds, of (*a*) schools or colleges, (*b*) hospitals, (*c*) dispensaries, and (*d*) other public works from which no profit is expected to be derived, where the value of the land exceeds Rs. 10,000, without the previous sanction of the Government of India.

By rule 12 the grant may be made by the Commissioner or the Collector when the value does not exceed Rs. 5,000 or Rs. 25C respectieely. Provided that lands in the neighbourhood of railway stations are not to be granted for dharamsalas to be erected by private persons, unless when erected they are to be in charge of the Local Board or municipality concerned. Provided further that the Collector may exempt from payment of land-revenue without any limit lands used for sites of hospitals, dispensaries, schools and other public purposes, so long as such lands are used for such purposes and yield no return to private individuals or local bodies.

By rule "15 (1) Except as otherwise provided by Rule 12, the occupancy of any land shall not be granted revenue-free and no right in, or over, or appertaining to any land belonging to Government, shall be exercised to or by a municipality or a Local Board without the previous sanction of Government.

(2) Every sanction, may be given subject to such conditions as Government shall think fit in each case to prescribe.

(3) But nothing in this Rule shall be deemed to prevent the grant of occupancies toMunicipalities or Local Boards on the same terms as are applicable to such grants to other persons."

For the future no land or other immovable property belonging to Government is to be transferred to municipalities, except under such rules and conditions as Government may prescribe. (G. R. No. 1894, July 13th, 1871).

It would be a good thing if municipalities would purchase by private agreement, land near railway stations which is in the occupation of individuals, specially where it may be in contemplation to construct roads. (G. R. No. 4875, Dec. 2nd, 1865).

The following extract from G. R 4678, of 14th July 1888, Rev. Dep., is important:—

On careful consideration of the subject dealt with in these papers, His Excellency the Governor in Council has come to the conclusion that the principle which should be observed in dealing with questions of land required for municipal purposes is that Government land should only be granted free or at reduced rates to municipalities in very special and exceptional circumstances, which must be clearly established before any such grant can be authorised. In the present instance no such circumstances have been proved to exist. One of the objects for which land is required by the municipality is the establishment of a market. As the municipality will charge rent for the use of the stalls in it, and will thus derive a profit from the institution of a market, it seems but reasonable that they should pay a suitable price for the valuable plot of Government land which they require for the purpose. As regards also land needed in order to widen roads or streets, the Governor in Council is unable to perceive any sufficient reason why a prosperous municipality should be given such land at the expense of the State. If it can afford to pay for the land, there is no adequate cause why it should not be called upon to give a fair value. The mere fact that the land is the property of Government gives the municipality no valid ground for asking that it should be made over free of charge. It must be remembered that municipalities receive aid from Government on a general plan towards the maintenance of their schools and dispensaries, and Government therefore cannot entertain any claim on the part of municipalities for additional grant-in-aid in the shape of gifts of land. It may also be observed that it is very probable that land in Nadiad will hereafter increase materially in value. In view of all these considerations His Excellency in Council is of opinion that no Government land should be granted for any purpose to a municipality, save on payment of a reasonable price representing approximately its market value.

Commissioners are authorised to sanction the appropriation of lands for roads or for any public work, when no compensation has to be paid by Government for the lands taken up, and

when the assessment on the land appropriated does not exceed Rs. 5 per annum, yearly returns being forwarded showing the number of sanctions given, the area and assessment of the land in each instance, and the purpose for which it is appropriated.

Commissioners should be careful, when sanctioning appropriations of land paying assessment, to assure themselves that the sacrifice is unavoidable, and that the object is of sufficient public importance to justify the loss of revenue which the transfer of the land will occasion. (G. R. 6884 of 4th October 1882 : 8558 of 6th December 1882 and 3621 of 12th May 1883.)

Commissioners are also authorised to sanction appropriation of unassessed lands including village sites, required for roads, schools, dharamsalas and other public purposes. These should be shown in the yearly returns to be submitted in the case of assessed lands. (G. R. 720 of 8th March 1887, Fin. Dep.)

Free grants of lands to Local Boards and municipalities can only be made with the sanction of Government under Rule 12 of the Rules under the Land Revenue Code. (G. R. 3191 of 19th May 1888, Rev. Dep.)

Conditions on which free grants of land are to be made to Public Bodies—In future when any immovable public property is made over to a local authority for public purposes, the grant shall be made expressly on the condition, in addition to any others that may be settled, that should the property be at any time resumed by Government, the compensation payable therefor shall in no case exceed the amount (if any) paid to the Government for the grant, together with the cost of their present value, whichever shall be the less, of any buildings erected or other works erected on the land by the Local Authority. (G. of I. R. No. 4374, dated 23rd October 1891 and G. R. No. 8167, dated 28th November 1891.)

Need not be insisted on when land is sold—In cases in which the land is sold to a local body for its full market value as a business transaction and no concession to the local body is involved in the transfer, the condition prescribed in the Resolution of the 23rd October 1891, need not be insisted upon. The Government of India has, however, no objection to the Local Government imposing the condition if considered desirable and if the local body is willing to take the land subject to such a condition. (G. of I. letter No. 848, dated 29th February 1892, quoted in G. R. No. 1849, dated 17th March 1892.)

RESOLUTION.—Government consider it desirable to issue instructions elaborating and explaining the orders read in the preamble.

2. The decision that Government land should be granted to a municipality free or at reduced rates only in very special and exceptional circumstances which must be clearly established is intended to apply to those cases only in which land the property of Government is made over to a municipality permanently and without any specific reservation of power to resume the land from the municipality. When such a power is reserved the grant is in effect a mere permission to the municipality to use the land during the pleasure of Government; and in such cases there is no reason why the grant should not be made revenue free.

3. Ordinarily when the land is required by the municipality for a purpose from which it expects or intends to make a profit, as for example for building a market from which it will derive income by the levy of rents or stall fees, Government land should be granted to the municipality on payment of occupancy price and the assessment appropriate to the use to which the land is intended to be put, and remission or reduction of the occupancy price and assessment should be granted, as directed in the orders of 1888, only in very special and exceptional circumstances which must be clearly established.

4. When the land is to be used for a purpose from which the municipality does not expect to derive any profit, as for example for street improvements, or for building a dispensary or a school-house, the grant will ordinarily be made revenue free subject to the conditions stated in No. 16 (1) of the rules under section 214 of the Bombay Land Revenue Code and to any other condition which may be prescribed either generally or in any particular case, provided that the municipality agrees to accept all these conditions. If the municipality refuses to accept the conditions, the grant should be made in accordance with paragraph 3 of this Resolution. (G. R. 8981 of 3 Sep. 1908, Rev. Dep.)

Conditional transfer made enforceable even after land included in a municipality.—Where certain lands were transferred by Government to a municipality on condition that Government may repossess themselves of the same whenever they were required for a public purpose, and the Municipal Act was subsequently extended to this land, *held* that in such a case the condition can be enforced as the transfer was no bar.

'12 **Public streets.**—See sec. 3 (13) for definition.

"The word "street" in this section means and includes not merely the surface of the ground, but so much above and below it as is requisite or appropriate for the preservation of the street for the usual and intended purposes.

"The word "public" was inserted here by section 49 (*b*) of Act II of 1884.

See I. L. R. 12 Bom. 490 where it was *held* that as the column of space standing on the street was vested in the municipality, the plaintiff had no right to occupy it with a balcony, which by intercepting light and air would greatly impair the use of the area as a street.

Sec. 32 of Bengal Act V of 1876 corresponds exactly with (*f*), except that here "public streets" is substituted for "roads" in that Act.

Held that the word "roads" did not mean everything above and below the road. The enumeration of "pavements, stones," &c., clearly show there is a limitation to the word road. Looking at the case of *The Vestry of St. Mary, Newington* vs. *Jacobs* (4 R. 7, Q. B. 47), the sub-soil did not belong to the municipality. (*Chairman, Naihati Municipality* vs. *Kishori Lall.* I. L. R. 13, Cal. 171).

There is a presumption that a highway, or waste land adjoining thereto, belongs to the owners of the soil of the adjoining land.

Sec. 38 of Act XV of 1873 (N.-W. Provinces Act) was not intended to deprive persons of any right of property they might have in the land used as a public highway, or to confer such rights on the municipality, nor has the section any such effect.

In a case where such land ceased to be used as a public highway, and was granted by the municipality to third persons, who proceeded to build thereon,—*held* that the owners had a good cause of action against such persons for the demolition of the buildings and restoration of the property to its original condition. (*Nihalchand* vs. *Azmat Ali Khan.* I. L. R. 7, All. 362).

Held, following the two preceding rulings, that sec. 10 of Bengal Act III of 1864 does not deprive a person of any right of private property that he may have in land used as a public road, nor does it vest the sub-soil of such land in a municipality; and when such land is not required as a public road, the owner is entitled to claim its possession. (*Modhu Sudan* vs. *Promeda Nath*, 20 Cal. 732).

On this point see also notes 1 and 9 *supra*.

The word "spaces" was omited from this clause, by the Act of 1884, as such spaces were included in the definition of street, or, if not, they would, as a rule, not be areas such as ought to vest in municipalities. They would either be in the enjoyment of some land holder, or else under sec. 37 of the Bombay Land Revenue Code they vest in Government. In the latter case Government can always, under clause (*e*), transfer any such open space to the municipality, if necessary.

The term 'public spaces' in the Act of 1873 was held not to include Government land used by the P. W. D. for storing materials and rented for a term of 25 years to a private individual. It means and includes spaces which the public are *entitled to use*. See note 7 section 54.

Rule 35 Bombay Land Revenue Code provides "(1) In municipal districts, building sites and plots of open ground, which have not been dedicated to public use or already transferred to the municipality, are specially recovered by Government under sec. 50 (2) of the Bom. District Municipal Act, 1901.

This reservation does not apply to small pieces of ground lying between the houses and the road-way in an irregular street or road of varying width which should be recognised as forming part of the street and vesting in the municipality, unless private individuals have rights thereto. But separate vacant sites between houses do not vest in the municipality even though they are unenclosed, unless they have been transferred to the municipality by Government.

(2) When the right to any piece of ground is in dispute between a municipality and the Government, the Collector shall endeavour to decide the dispute in accordance with the foregoing principles. If the Collector is in doubt, or if the municipality does not accept his decision, the case shall be referred to the Commissioner.

Rule 36 provides special rules for lands to which a City Survey has been extended under Act IV of 1868 or section 131 of the Code.

Provincial high or trunk roads.—The words in the old Act "not being portions of provincial high roads or trunk roads specially reserved by Government" have been omitted, so that this clause now stands as it was originally in sec. 17 of Bom. Act VI of 1873, but it was then said that the equity of requiring municipalities to contribute towards the cost of the maintenance of portions of Provincial roads situated within municipal limits could not be denied, as by section 24 of the Act of 1873 the construction and maintenance of roads situated within municipal limits was a legitimate charge upon the municipal funds. It had, however, been represented that some of the municipalities, through the limits of which portions of

Provincial roads pass, &c., are too poor to pay the entire cost of the maintenance of those roads. These last 14 words were therefore introduced by the Act of 1884 to enable Government to relieve municipalities, when thought necessary, of responsibility for this maintenance, and G. R. No. 88 of 9th January 1890, Gen. Dep., laid down that the principle for the future should therefore be that those municipalities which levy tolls on Provincial roads should, in consideration of the income which they derive from the levy of tolls, be required to defray the entire cost of the maintenance of such road situated within their limits, and that in all other cases the municipalities should be required to contribute up to a limit of 50 per cent. of the entire cost in consideration of the benefit accruing to the local traffic for the maintenance of such roads in good order at the cost of Provincial Revenues. The contribution to be levied from each municipality under these orders should be fixed by the Collector in communication with the Executive Engineer of the District concerned, regard being had to the financial condition of each municipality and the extent to which each road is subjected to wear and tear by the local traffic, and the proposals should be submitted for the final sanction of Government.

2. Where, as in Thana and Poona, special arrangements exist under specific orders of Government for the maintenance of Provincial roads either at the cost of municipal or Provincial Funds, those arrangements should be observed. (G. R. No. 88 of 9th January 1890, Gen. Dep.)

The Bill as originally drawn provided that municipalities should make such contribution for the maintenance of these roads as Government might decide. It was, however, contended in the Legislative Council that in no other Province in India were such contributions levied; that residents within municipal limits paid taxes to the Provincial exchequer also, and if they used the roads it was in virtue of their position as tax-payers of the Province, and that if Government vehicles being exempt from municipal wheel-tax, &c., made no contribution to municipal roads, it was, but fair that the municipality should not contribute to a Government road. His Excellency the Governor in Council conceded the point and the clause was struck out.

H. E. the Governor is of opinion that when a road is provincialized it should be maintained by and at the cost of Government alone. There seems to be no more reason for asking a municipality, through whose local jurisdiction the road passes, to contribute towards the cost of its maintenance because municipal rate-payers use the road extensively and thereby increase that cost, than there is for asking a Local Board to contribute in the same manner because local fund rate-payers use the road extensively. In the latter case the Local Board is entirely exempted from contributing towards the cost of maintenance of the road and the same should be done in the case of a municipality. If it is thought desirable to make the municipality liable for the upkeep of the road it should be deprovincialized and handed over to that body.

2. In view of the above principle, the recovery of contributions from certain municipalities sanctioned in G. R. No. A.—2539 of 30th September 1908, should be discontinued, and the proposal for the levy of contributions from certain other municipalities towards the cost of upkeep of the specified portions of the provincial roads which lie within their limits should be negatived.

3. The other proposal to hand over to the latter municipalities for maintenance the portions of the provincial roads, which are situated within their limits, does not commend itself to Government. (G. R. No. A.—9368 of 16 Oct. 1912, P. W. D.)

Municipalities have no control over provincial high roads or trunk roads. (G. R. 1890 of 13 March 1891.)

By section 38 of the N.-W. P. and Oudh Municipal Act, 1873, "all public highways in any municipality, not specially reserved by Government, together with all erections thereon and all materials thereof, shall be vested in and belong to the committee."

As these roads do not vest in a municipality, they are to be considered as "property specially reserved by Government" within the meaning of clause (2).

The Bombay Highways Act, 1883 provides funds for maintaining Provincial Roads used for local purposes by the imposition of a tax by Government in a specified local area on carriages, &c., of persons, resident within the local area.

By sec. 5 of that Act, the tax is not leviable in a municipality where a tax on vehicles and animals is already levied, but the municipality is to make such contribution towards meeting the expenses of maintaining provincial roads not provided for out of such municipal fund, as Government may consider fair.

By section 6, the proceeds of the tax are to be credited to Provincial or Local Funds as Government shall direct.

The Act has been extended to various towns in the Presidency and rules have been framed and published, vide *Bombay Government Gazette* for 1884, pages 24 and 445; and for 1887, page 796.

50-A. (1) In any municipal district to which a survey of lands other than lands ordinarily used for the purposes of agriculture only has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the municipality, or by any person as against the municipality, it shall be lawful for the Collector after formal enquiry, of which due notice has been given, to pass an order deciding the claim.

Decision of claims to property by or against the municipality.

(2) Any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined according to section 204 of the Bombay Land Revenue Code, 1879, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order, provided that the plaintiff has had due notice of such order.

(3) (*a*) The powers conferred by this section on a Collector may also be exercised by an Assistant or Deputy Collector or by a Survey Officer as defined in the Bombay Land-Revenue Code, 1879.

(*b*) The formal enquiry referred to in this section shall be conducted in accordance with the provisions of the aforesaid Code.

(*c*) Any person shall be deemed to have had due notice of an enquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the Governor in Council.

Origin of section.—This is new and was added by the Amending Act X of 1912 which was a necessary corollary to Act XI of 1912 which introduced similar amendments to the Bombay Land Revenue Code. The statement of Objects and Reasons says:—

"The Bill introduces a new section the object of which is to give final effect after the lapse of one year to decisions on disputed claims to property in which the municipality is interested. The absence of any effectual limitation to claims gives rise to uncertainty and is liable to provoke unnecessary litigation. The results of an enquiry made in the course of a city survey are liable to be rendered nugatory at any time by civil suit. The new section will facilitate the decision of disputes and in many cases render resort to litigation unnecessary."

The municipality will now have to wait only a year before making use of the land for a public purpose. Prior to this the suit could be brought at any time within 12 years so that the municipality was always liable to have a claim made upon the land long after it had been devoted to the public purpose.

51. All moneys received by or on behalf of the municipality by virtue of this or [2] any other Act; all taxes, tolls and other imposts, fines, fees, penalties paid to or levied by them under this Act; [3] all proceeds of land

[1]Municipal Fund.

or other property sold by the municipality, and all rents accruing from their land or property; as also all interest, profits and other moneys accruing by [4] gifts or transfers from the Secretary of State for India in Council or [5] private individuals or otherwise, shall constitute the Municipal Fund, and shall be held and dealt with in a similar manner to the property mentioned in section 50:

provided that—

[6] Provision as to special trusts.

(*a*) nothing in this section, or in section 50, shall in any way effect any obligations accepted by or imposed upon any municipality by any declarations of trust executed by or on behalf of such municipality, or by any scheme settled under the Charitable Endowments Act, 1890, for the administration of any trust:

[7] When special trusts may be created.

(*b*) a municipality may, subject to the condition that reasonable provision shall be made for the performance of all obligations imposed or that may be imposed on them by sections 54, 55 or by or under section 61, or 72, or Chapter XII, credit to a separate heading in the municipal accounts any portion of the municipal fund received by them specially for, or devoted by them to, the purposes of schools or dispensaries or of water-works or fire-brigades, or other such purposes as the Commissioner in this behalf approves, and, provided that there shall be credited to such special heading such sums only as expressly relate to the object for which the fund designated by such heading was created, the municipality may apply the sums so credited exclusively to the respective objects to which they are so credited.

1 **The Municipal Fund.**—This section, except the proviso, is an exact reproduction of section 18 of the old Act of 1873, except that the "Secretary of State" is substituted for "Governor."

As to payments out of the fund, the financial control of a municipality being, by section 24, placed entirely in the hands of the president, there is nothing to show that any committee or chairman is to exercise any control over the funds of the municipality or to receive or disburse money. See note 3 to section 24.

See section 54 as to matters in regard to which expenditure may be made from the Municipal Fund.

Income Tax.—In exercise of the powers conferred under the Income Tax Act, 1886, the Governor-General in Council has exempted from liability to tax payable under that Act the income of municipalities, which are local authorities as expressed in section 3 clause (1) of that Act. (Gov. of I. No. 434 of 27th April 1886, G. R. 1252 of 5th May 1886 and 2573 of 25th Aug. 1886, Fin. Dep.)

Impressed cheques.—By G. R. No. 2422 of 15th July 1892, Gen., Dep., Government sanctioned the extention of the system of withdrawing money by impressed cheques, which was in force among Local Boards, to Municipalities banking with Government Treasuries. Municipalities when sending their cheque books to be impressed by the Superintendent of Stamps should also send a receipt from a Government Treasury for the full value of the stamps to be impressed.

Under the Madras Act all orders for payment from the Municipal Fund shall be signed by the Chairman and in his absence by 2 councillors authorised by him.

Under sections 98-99 of the Bombay City Act, Government may detain municipal monies for arrears of repayments of loans incurred, and if these monies are insufficient may attach the Municipal Fund.

Funds for special purposes.—If a municipality accept a contribution in any year for a special purpose it must perform the conditions on which the contribution was offered and accepted but it is not bound to do this in perpetuity. See section 57 as to special trusts.

2 **"Or any other Act."**—See note to section 52. It is now clear that the funds to be applied under this Act may consist also of sums accruing under the provision of *any* law for the time being in force. This would include loans to a municipality under the Local Authorities Loans Act, 1879. Some of these Acts are as under:—

Local Boards Act.—By section 47 of the Bombay Local Boards Act, 1884 (I. of 1884), "every District Local Board shall assign and cause to be paid to every municipality and cantonment committee within the district for which such board has been established, out of the District Local Fund a sum equal to two-thirds of the amount of revenue described in clause (*a*) or clause (*b*) of section 44 levied from lands or shops within the municipal district or cantonment subject to such municipality or committee, and may, in its discretion assign and pay to every such municipality or committee, the whole of the said amount, (which amount shall, at the request of the District Local Board, be ascertained and certified by the Collector.)"*

Assignments of certain portions to municipalities or cantonment committees.

"The sum so assigned and paid shall be expended by the municipality or cantonment committee only for such purposes as are described in section 30, or for the remuneration of officers and servants whom they entertain for any of the said purposes; and a portion thereof equal to not less than one-third of the revenue described in clause (*a*) or clause (*b*) of section 44 levied from lands or shops within the municipal district or cantonment, subject to such municipality or committee, shall be expended by it for educational purposes only as defined in section 30, clause (*d*)."

The Local Board must assign to the municipality two-thirds, and may assign the whole of the Local Fund Cess levied within the municipal district, and the municipality must expend one-third, and may expend the whole of such assignment upon such educational objects as are shown in section 30, *viz.* (*d*) the provision of suitable accommodation for, the visiting and maintenance of, and the training of teachers for primary schools, and the general development and extension of primary education. (G. R. 1244 of 30th June 1885, para. 6, Educ. Dep.)

The remaining one-third will be at the disposal of the District Local Board for the same purposes as the balance of the Local Fund levied in each taluka, but may be assigned to the Municipal or Cantonment Committee. The two-thirds to be necessarily made over correspond with the one-third for educational purposes *plus* the one-third for purely local uses to be spent in each taluka.

This section lays down clearly that only the cess levied on lands within the Municipal District can be assigned. The Cess on lands under the authority of a District Local Board is naturally credited to the District Local Fund, but its expenditure outside the same area is justified by the last clause of section 45. (G. R. 6787 of 21st Aug. 1885, Rev. Dep.)

As in some municipalities the limits comprise merely the site of the town, whilst in others various areas of cultivated lands are included, the inequality of the revenue derivable under this section 47 may be remedied, as pointed out in G. R. No. 1884 of 6th November 1884 (Educ. Dep.), by the provision that District Local Boards may, with the sanction of Government, subsidise primary schools within municipal limits. (G. R. 1167 of 30th March 1885, para. 27, Gen. Dep.) This affords another opportunity for Local Boards to supplement Municipal Funds in those cases where the Municipal Fund will not allow of any sufficient expenditure for educational purposes. Consequently it is intended that the District Local Board shall help these municipalities to pay such expenses. To this end joint Committees of the District Local Board and the Municipality concerned will be appointed under section 36.

If the sanction of Government is desired, under section 45 of the Local Boards Act, 1884, to a subsidy from the District Local Fund to municipalities towards payment of educational expenses, it must be shown what benefit the area under the District Board, and especially its cess-paying population, will derive from the expenditure of this subsidy on schools in municipal towns. If it is the fact that cess-payers largely reside in these towns for the benefit of education or send their children to them for that object, it will be easy to show what the value of the interest of the cess-payers in these schools is as compared with the interest of the town population, and an equitable contribution can be calculated on these data.

* The certificate is to be furnished in the form No. 2 to Rules under the Local Boards Act. (*Vide* Appendix A of the Author's annotated edition of the Bombay Local Boards Act 1884.)

(Extract from G. R. 4725 of 10th June 1885, Rev. Dep., quoted in G. R. 1236 of 26th June 1885, Educ. Dep.)

It is open to any municipality to apply to the Local Board for a grant-in-aid of its primary schools on the ground that such schools are of use and benefit to the cess-payers in the area outside the Municipal District and under the authority of the Local Board, and that the Local Board, if satisfied that the conditions required by section 45 are so fulfilled, may ask sanction of Government to make a grant accordingly. (G. R. 1244 of 30th June 1885, para. 8, Educ. Dep.)

As the smaller municipal towns usually contain a large proportion of agricultural cess-payers, their will be on the one hand a slight loss in fee receipts, but on the other hand there will be good ground for a subsidy from the Local Board. (G. R. 1267 of 3rd July 1885, para. 4, Educ. Dep.)

The Commissioner in Sind in his memo. No. 1505 of 1st Sept. 1815, para 9. says that it should be impressed upon Local Boards the advisability of meeting any application from a municipality for grants-in-aid with liberality, bearing in mind the fact that were a municipality abolished for the simple reason that it could not bear a share of the cost of education, the consequence will be that the entire cost will fall upon Local Funds.

To the observation that cess-paying residents in municipal towns should be credited, in adjusting what should be the municipal burthen, with the whole payment of the educational cess contributed by them, no matter where the land may be situated for which it is paid, as otherwise they would get no return for the cess paid by them, Government stated as follows: By section 48 of the Local Boards Act, 1884, the educational ⅓rd of net proceeds of the local cess is placed at the disposal of the District Local Board, with this exception, that the educational ⅓rd of the cess levied on lands within Municipal Districts and Cantonments included in the area for which such Board is established is to be assigned and paid to such municipalities and Cantonments and spent by them on educational purposes, therefore the cess levied on lands outside of municipal and Cantonment limits, the owners or occupants of which reside within municipal limits, is at the disposal of the Taluka Local Board. This is the correct principle, for it is clear that if local rates, instead of being spent locally for the benefit of the area for which the Local Board Administration is created could be claimed by non-resident cess-payers and carried off to be expended in any place where they happen to reside, the object of Local Funds would be defeated.

Nevertheless, where a large proportion of cess-payers reside within municipal limits, in many cases partly to enjoy facilities for the education of their children, a subsidy may be granted to the municipality in the following way:—In section 30, provision is to be made in certain matters for the areas subject to the Boards, not in the areas. Section 45 enacts that with the sanction of the Government expenditure may be made for the use or benefit of the said area, ontside of that area. By section 36 Joint Committees may be appointed by District Local Boards and municipalities for any purpose in which they are jointly interested. If then a District Local Board considers that it will be for the use or benefit of the area under its authority *i. e.*, of the rate or cess-payers of that area, to subsidise from the funds at its disposal, primary schools established in municipalities included in that area, it can do so with the sanction of Government by use of the above provisions. (G. R. 1884 of 6th Nov. 1884, Educ. Dep.)

(*N. B.*—For further information on this subject, see the Author's annotated edition of the Bombay Local Boards Act.)

Poisons Act.—Under section 10 of the Poisons Act (Bombay Act VIII of (1816), the Collector may pay such portions as seems to him fit of the net proceeds of the fines, fees and penalties levied under the Act, to the credit of some municipality of the District for which the licenses issue and the fines and penalties are levied; and such portions so paid shall be available to meet the general expenses chargeable to the said Municipal Fund.

This was extended to Sind by Government Notification, dated 14th June 1867.

Cattle Trespass Act.—By section 31 of the Cattle Trespass Act, 1871, the Local Government may (*a*) transfer all or any of the functions of the Government or of the District Magistrate to any local authority (*i. e.*, municipality, &c.) and (*b*) may direct that all or any of the surplus accruing in any district under section 18 of that Act shall be placed to the credit of any municipality formed for any local area in the district.

The functions of the District Magistrate under some sections, such as 4, 5, 6, 12, 14 and 17 have been transferred to various municipalities under orders issued from time to time in each case.

By G. R. 383-A. of 17th January 1887, Gen. Dep., the whole surplus accruing under section 18 of the Act should be placed to credit of the municipality in which the pound is situate. But under various orders issued from time to time by Government, (See the Bombay

List of Local Rules and Orders,) this general order is cancelled as to some municipalities and modified as to others.

The following order was issued under No. 2501 of 17th March 1914, Rev. Dep. "Whereas it appears to the Governor in Council, on the report of the District Magistrate, Karachi, that in the limits of the Karachi municipality and the Karachi Cantonment cattle (and particularly cows) are habitually allowed to trespass on land and damage road-side trees and other produce thereon; the Governor in Council is pleased to direct, in exercise of the power conferred upon him by section 12 of the Cattle Trespass Act, 1871, as amended by section 5 (1) of Act I of 1891, that on and after the 26th March 1914, for every bull, bullock, cow and heifer which may be seized within the said local area and impounded in accordance with the provisions of the Cattle Trespass Act, 1871, as amended by Act I of 1891, the pound-keeper shall levy a fine equal to double the fine mentioned in the scale specified in the first mentioned section."

District Police Act.—As fines levied under Bombay VII of 1867 for offences within municipal limits were credited to Municipal Funds under No. 3467 of the 7th December 1874 and No. 283 of 29th January 1875, those levied for offences within municipal limits under sections 61 and 62 of the new District Police Act which correspond with section 31 of the former Act should be similarly credited to municipalities. (G. R. 2785 of 7th August 1891.)

Under Government of India orders published with G. R. 374 of 18th January 1912 G. D. these fines are to be credited to the funds of any local authority constituted under the Municipal or Village Sanitation Acts.

Government may direct that out of these fines may be paid batta and other expenses of witnesses for the prosecution in such cases.

Prevention of Cruelty to Animals Act.—On the principle of the above order (No. 2785), fines levied for offences under Act No. XI of 1890, within municipal limits should be similarly credited to municipalities (G. R. 144 of 24th April 1894, Gen. Dep.)

Public Conveyances Act (Bom. VI of 1862).—Under section 34 of this Act, the Governor in Council may dispose of the balance of the fees levied, as may seem necessary.

Whenever the Act is introduced in a municipal town, the general practice is for Government to direct that this balance, after all necessary expenses have been defrayed, be, from time to time, paid over to the municipality.

Land Revenue Code; fees from quarries, stone, sand, earth, &c. G. R. 1057 of 8th Feb. 1890 *in supersession of all previous orders on the subject* sanctioned the proposal that all such fees should be credited as follows:—*viz.*, in respect of—

(*a*) Government land outside Municipal limits
(*b*) „ inside „
(*c*) Municipal „ „
} to Local Funds.

It was stipulated that this permission to Local Funds to appropriate the fees for quarrying or delving in waste lands was not to prejudice the proprietory rights of Government as to power of disposal over the lands in question.

As to municipalities not being authorised to levy, under this Act, fees for quarrying, nor to give licenses or permissions for such purposes, see note section 70.

It was not intended that fees for quarrying in assessed land should be assigned to any municipality (G. R. 4225 of 30th Nov. 1888, Gen. Dep.), or that the municipality should levy fees from the public for such quarrying.

Rent from Government waste land.—No municipality is allowed to take rent from Government waste land within its limits unless specific permission to do so has been given by Government. (G. R. 3304 of 24th Sept. 1873). See Appendix J., Part II.

Proceeds of unclaimed property.—The proceeds of unclaimed property cannot be made over to the municipalities within whose limits it is found, but must be credited to Imperial Revenue.—G. R. No. 361, Feb. 20th, 1867.

Assessment of Land Revenue.—The ordinary assessment on land, &c., sold in municipal and non-municipal towns will obviously be recovered from the parties occupying the ground, who will be responsible for its payment. In the event of their failing to pay, the right of occupation can be again sold. (G. R. No. 1750, Sept. 3rd, 1886.)

Municipalities have no claim to the assignment of the Land Revenue assessed upon lands within their limits which, like all land revenue, is an Imperial asset. The Governor-General in Council is wholly opposed to the alienation of this revenue to municipalities and no such alienation should be made hereafter. (G. of I. No. 2128 of 31st Dec. 1879, G. R. 132 of 15th Jan. 188, Gen. Dep.)

When any material is to be removed by a contractor on behalf of a municipality, the officer in charge of the taluka should have a bill prepared for the quantity actually taken from the quarry. The contractor should then be furnished by the Engineer in charge of the work (or where there is no Engineer, the chairman of the Managing or Works Committee) with a certificate of exemption for the amount of material actually utilised on the work, the estimate being based on the bills for work passed in favour of the contractor. For instance, if the work was bridge work, then the bills would be for so many cubic feet of rough stone as quarried, or so much lime stone, or kankar, or sand, as the case might be. A comparison of the bill issued by the Mamlatdar or Mukhtiarkar with the certificate of exemption granted by the Engineer will at once show whether any material in excess of the actual requirements of the work has been removed by the contractor without payment of fees. (G. R. 8824 of 12th Sept. 1906 Rev. Dep.)

3 **Proceeds of land, &c.**—In England the purchase monies arising from the sale of corporate land cannot be paid into the fund for the discharge of corporate debts. See *Ex-parte Hythe Corporation* (1840) 4 Y. and C. (Ex.) 55.)

Rents accruing from property.—A municipality may charge rent for the use and occupation of their land and property just as any other landlord might. Hence G. R. 8087 of 18th Oct. 1915, G. D., approved of the levy of fees for the occupation of dharamsalas, but such fees being rent it was doubtful whether they could be recovered under Chapter VIII.

It is even doubtful whether they could be recurred under section 166 as not being rent for land. A civil suit would apper to be the only means of recovery.

4 **"Gifts or transfers from Secretary of State."**—See Part II, Appendix F. for principles to be observed in giving grants-in-aid to Local Bodies from Provincial Revenues.

With regard to the recommendations of the Decentralisation Commission as to subventions by Government in aid of municipal funds in respect of specially large projects, such as those concerned with drainage or water supply and in the case of poorer municipalities some subvention for general purposes, see para. 18 of the Government of India Resolution in the Preface to this edition.

5 **Private contributions or otherwise.**—There appears to the Government of India to be no reason why municipal Boards should not invite the assistance of local zamindars towards public objects. The orders contained in Home Dep Res. of 11th July 1885 were intended to apply to officers of Government ac ing in their individual capacity, and not to such Boards. (G. R. 4384 of 19th Nov. 1885, Gen. Dep.)

Loans.—Government will not sanction any loan from Local Funds to municipal works. (G. R. 264 of 22nd Dec. 1869.)

Municipalities can get loans from Government under the Local Authorities Loans Act, 1879, but on the conditions:—

1st.—That the loans are granted only for works of public and general convenience and utility, such as drainage, water works, bridges and the like, and not for works which are merely or mainly ornamental or convenient, such as a town hall, public garden, or market place.

2nd.—A local body which has borrowed from Government can only borrow from other sources after having obtained the sanction of the Local Government. (G. R. 390 of 28th January 1889, Fin. Dep.)

A municipality applied for a work which had been already actually finished and paid for out of current revenue. This circumstance at once made the application inadmissible. The rules appear distinctly to contemplate loans for proposed and not completed works. If other works have been postponed in order to permit of the extension of the water works being taken in hand, they may perhaps be made the reason for a new application, but that which is before Government must be disallowed. (G. R. 427 of 25th Jan. 1890, Gen. Dep.)

As to a loan from Government to a municipality for carrying out certain schemes for the acquisition of lands in municipal limits for the improvement of certain parts of the town. See G. R. 551 of 29 January 1907, Fin. Dep.

See the Local Authorities Loans Act and rules in appendix Part III of the previous edition of this Manual.

6 **Special trusts.**—This proviso is new and was added because it was said that, in view of recent arrangements for the administration of trusts by municipalities, it seemed necessary to except such trust funds from the operation of the section which declares that all money transferred shall constitute the municipal fund and be dealt with in the manner referred to in sections 17 and 18 of the Act of 1873.

Under the Madras Act, section 26, the powers of the Governing Board of Revenue in respect of charitable endowments by Regulation VII of 1817 may, with the consent of Government, be made over to a municipality.

When the question arose under the old Acts as to how far municipalities could be trustees of charitable funds, the Advocate General states:—

"For the reasons above stated, my answer to the question put to me is that Municipal Corporations in this Presidency can take in trust and become subject to all a trustee's obligations for the purposes defined by the Acts from which they derive their being, and for such further purposes as may be held fairly incidental to or consequential upon such defined purposes, but for no other purposes." (G. R. 178 of 16 January 1895.)

7 **Proviso (b).**—This is taken from section 221 of the Bombay City Act and is considerably amplified.

Formerly all receipts of the municipality formed a single municipal fund. This proviso enables separate accounts to be kept of small subsidiary funds.

[1]Municipal property and funds how to be applied.

52. All property vested in the municipality under this Act, and all funds received by them in accordance with the provisions of this Act, [2]and all sums accruing to them under the provisions of any law for the time being in force, shall be applied, subject [3]to the provisions and [4]for the purposes of this Act, within the limits of the municipal district:

provided always that it shall be lawful for the municipality, with the sanction of the [5]Governor in Council or any officer duly authorised by him in this behalf,—

[6](*a*) to incur expenditure beyond the said limits,—

(i) in the acquisition of land, or

(ii) in the construction, maintenance or repair of works, for the purpose of obtaining a supply of water required for the inhabitants of the municipal district, or of establishing slaughter-houses or places for the disposal of night-soil or sewage or carcasses of animals beyond the said limits, or for drainage-works, or for any other purpose calculated to promote the health, safety or convenience of the inhabitants of the said district; or

[7](*b*) to make a contribution towards expenditure incurred by any other municipality, or in any area subject to the authority of a local board or cantonment authority, or Sanitary Board or Committee, or of a Committee appointed under section 188 for an area notified under section 187, or incurred out of any public funds for measures affecting the health, instruction or convenience of the public and calculated to benefit the residents within the limits of the contributing municipality; or

(*c*) to create scholarships tenable out-side the limits of the municipal district:

provided further, that nothing in this section, or in any other provision of this Act, shall be deemed to make it unlawful for a

municipality, when with such sanction as aforesaid they have constructed works beyond the limits of the said district for the supply of water or for drainage as aforesaid,

(*a*) to supply or extend to, or for the benefit of, any person or buildings or lands in any place [8][throughout the line of country in which such works are situate, or contiguous to such line of country], whether such place is or is not within the limits of the said district, any quantity of water not required for the purposes of this Act within the said district, or the advantages afforded by the system of such drainage works, on such terms and conditions, with regard to payment and to the continuance of such supply or advantages, as shall be settled by agreement between the municipality and such person or the occupier or owner of such buildings or lands, or

(*b*) to incur any expenditure, on such terms with regard to payment as may be settled as aforesaid, for the construction, maintenance, repair or alteration of any connection pipes, or other works necessary for the purpose of such supply or for the extension of such advantages.

1 **Municipal property and fund**.—This section embodies sec. 23 of the old Act of 1873, and enlarges its provisions considerably.

Rate-payer may sue for misapplication of Fund.—"Any person having a direct personal interest, however small, in the proper application of the Municipal Fund created by section 17 of the Bom. District Municipal Act, can maintain a suit to prevent that fund being applied to purposes not allowed by the Act. That personal interest exists in the case of every individual tax-payer, since every person who contributes, and is liable to contribute, to the fund is personally interested in the due application of it, and does not, therefore fall within the prohibition of Clause (*k*) of sec. 56 of the Specific Relief Act, 1877, *(Vaman Tatyaji* vs. *The Municipality of Sholapur*, 1897, P. J. 54, I. L. R. 22 Bom. 646.)

Tyabji J. after going very exhaustively into the English authorities on the point and referring to the case of *Shepherd* vs. *The Trustees of the Port of Bombay*, I. L. R., 1 Bom. 142, as bearing on the case, remarks "As I have said before, the plaintiffs in this case, as rate-payers, and not mere strangers, are directly interested in the application of the funds. The absence of interest could have been urged against them with great force, if they had been merely inhabitants of Sholapur and not rate-payers, and as such, contributors to the fund. It would, in my opinion, have been fatal to them, if they were not even residents of Sholapur."

Illegal expenditure.—If an authority wrongfully expends, or proposes to expend, money on objects not within its statutory powers, or for ulterior purposes on objects *prima facie* within its powers (see *R.* vs. *Brighton Corp. Exparte* Shoosmith 96 L. T. 762, C. A.) any rate-payer may object at the audit, or an injunction may be obtained against the authority at the suit of the Attorney General (*A. G.* vs. *Merthyr Tydfil Union*, 1 Ch. 516, C. A.)

Fund not chargeable with a recurring payment throughout an indefinite period.—On the question being raised under the old Acts whether a municipality could guarantee to continue for all time subscriptions to certain dispensaries, it was held "that the municipality has not power to give such a guarantee so as permanently to bind their successors. Probably the Local Board and Municipality might bind themselves the one to the other under *section* 36 of Bombay Act I of 1884 and *section* 31 of Bombay Act II of 1884 for the future maintenance of these institutions. But in that case the two bodies might release each other from such obligation. An agreement under these sections could not be validly made for all future time irrespective of what the income and expenditure of these bodies might be in the distant future." (G. R., now see section 57.)

2 **Accruing under any law.**—"*And all sums...being in force*," seem at first scarcely necessary since sec. 51 expressly provides that "moneys received by virtue of...any other Act...shall constitute the Municipal Fund." But these words appear to have been inserted to

meet the objection raised in G. R. 4483 of 29th Oct. 1895 on the question whether sec. 23 of the old Act of 1873 applied to loans under the Local Authorities Loans Act, that it did not because the words "any other Act" in sec. 18 (now 51) meant 'any other Bombay Act,' and did not apply to a Govt. of India Act. It was said that if such loans became part of the municipal fund, they would become absorbed in the fund, and could not be applied only for the purpose for which the loan was made. The Advocate General, Bombay, however, advised as follows:—

"I do not think that the words 'or any other Act' are to be limited to Bombay Acts. A municipality certainly receives a loan obtained under Act XI of 1879 by virtue of Act XI of 1879, and although it holds and must deal with the loan for the carrying out of the works for the execution of which the loan was obtained, and for no other purposes, those works must be such as the municipality is legally authorised to carry out (section 4 of Act XI of 1879), that is to say, works permissible under the Bombay District Municipal Acts, and the loan is, therefore, held and dealt with in a 'similar manner' (section 18 of Bombay Act VI of 1873) to the property mentioned in section 17 of the last mentioned Act. The section of the earlier Act, is, in short, to be read, so as to be consistent with the latter Act, in other words, the loan is to be held and dealt with for the particular purposes of the District Municipal Acts, for which the loan was obtained, so too, as to section 23 of Bombay Act VI of 1873, a loan obtained under Act XI of 1879, is, in my opinion, within the expression 'funds received in accordance with the provisions of this Act.' The loan is received by the municipality as being, and by virtue of being a body corporate created by the Municipal Acts (Bombay Act II of 1884, sections 15 and 2), and I think that the loan, when received, becomes part of the municipal fund, to be dealt with as such under the District Municipal Acts, but subject to the obligation to apply it to the particular purpose of those Acts, for which the loan was obtained. The view does not seem to me to involve any *ultra vires* legislation by the Bombay Legislature, who do not exceed their power under 24 and 25 Vic. C. 67, and the loan itself, and in due course, the rates produced by the works on which it is expended, become security for its payment."

Application of funds under various other Acts and orders.—Under sec. 25, Bombay District Police Act, 1890, Government may direct the employment of additional police in any local area which appears in a disturbed or dangerous state, &c. The cost to be defrayed by a tax to be imposed or rate to be assessed, the amount of which, in a municipal district, shall be paid out of the municipal fund, or assessed by the municipality conformably to directions under sub-sec. (2).

Payment of remuneration to councillors.—There is no section of the Act which allows of the payment of fees or honoraria to councillors as such. Had the Legislature meant councillors to be paid for their services, the intention would doubtless have been expressed in unambiguous language, as in the case of the fees payable to members of the Bombay Town Council (*vide* section 24 of Bombay Act III of 1872), and the absence of any express authority for the payment to them of any fees leads to the conclusion that they were not intended, and are consequently unauthorised. (G. R. 294 of 25th January 1888.)

Payment of carriage-hire to councillors.—When the presence of a councillor is really necessary in the performance of any particular duty, and a carriage is required, the hire may be paid. Needless charges cannot properly be thrown on the municipality, nor can it be called upon to pay carriage-hire for the attendance of members at meetings. (G. R. 2257 of 9th June 1890, Gen. Dep.)

Payment of travelling expenses to councillors.—The question having arisen whether members of Local Boards travelling on the business of Local Boards should be exempted from payment of tolls and ferry fees, G. R. 7680 of 22nd Sep. 1885, Rev. Dep., decided that this could not be allowed as it would be equivalent to a grant of part of their travelling expenses.

G. R. 3220 of 1st May 1889, Rev. Dep., further ruled that officers required to attend meetings of Local Boards could not be allowed travelling expenses under the above ruling.

G. R. 2395 of 20th June 1889, Fin. Dep., ruled that the above order applied equally to officers required to attend meetings of Municipal Boards.

3 **"Subject to the provisions and."**—These words have been inserted apparently to meet the difficulty referred to by the Remembrancer of Legal Affairs in his opinion quoted in G. R. No. 4483 of 29th October 1895, Gen. Dep.

Under this section as now framed, loans under the Loans Acts form part of the funds contemplated in this section and should be applied, not necessarily for the purposes of the Act, but subject to the provisions thereof. (See preceding note).

Under the Panjab Act of 1891, "the payment of any amounts falling due on any loan legally contracted by a municipality" is *the first* charge against its fund.

4 **Purposes of this Act.**—Municipalities should be informed that the Governor in Council is advised that it is doubtful whether the public funds at their disposal can legally be devoted to such subjects as the Imperial Institute. (G. R. 618 of 22nd Feb. 1887, Gen. Dep.)

Religion—grant of land for purposes of.—By G. R. 3233 of 12th August 1889, Gen. Dep., Government refused to sanction grants of land by a municipality for building a Mosque or a Tikana. The following opinion of the Legal Remembrancer under the old Acts, is quoted:—"I am of opinion that there can be no room for doubt that it is not open to municipalities to provide out of the property vested in them for buildings for religious or devotional uses by a section of the public.

There is nothing in the Acts which, in the slighest way, authorises any expenditure in connection with any religion. The purposes of the Act are entirely secular. The strongest objection, it appears to me, is that the sites would be so placed at the sole disposal of a section of the public only, as to render the exclusion of other portions of the public a necessary consequence.

Section 24 appears to me to preclude municipalities from making any provision for such purposes by a *free* grant of any property vested in them. But the same objection would apparently not apply to a *lease* or *sale* for good consideration for the purposes in question, as then the dedication to the special purposes would be made by the lessee or vendee and not by the municipality itself."

Mosque connected with a hostel.—Government sanctioned the establishment of certain boarding houses for the encouragement of Mahomedan education. The hostel consisted of a boarding house with a small mosque for the use of the boarders attached. It was urged that this differed in principle from the case above, and expenditure by the municipality was covered by section 54 (1) (*p*) and section 56 (*c*). G. R. 5688 of 12th Oct. 1905, G. D. sanctioned the expenditure.

5 **Governor in Council.**—In Sind, this means the Commissioner in Sind. (sec. 3 (3)).

6 **Expenditure beyond limits.**—This clause (*a*) is taken partly from sec. 261 of the Bombay City Act so far as regards a water-supply; and the Public Health Act, 1875, sec. 51, (38 and 39 Vic. Ch. 55.)

It may sometimes be necessary for a municipality to build, say, a reservoir for its water-supply outside its own limits. This meets the difficulty discussed in G. R. 4483 of 29 Oct 1895, Gen. Dep. It may often be a great convenience to the inhabitants of a municipality to keep the main roads outside of municipal limits in good repair. And under sec. 59 (*b*) (xi) may impose a tax for this purpose provided it does not affect persons residing outside of those limits. See note 13 sec. 50.

7 **Contribution to other local bodies.**—Clause (*b*) is very much the same as the proviso to sec. 23 of the Act of 1873.

Under the Madras Act, sec. 114, Government may direct a municipality to show cause within a month why it should not pay such contribution, and order it to pay, not only in the limited matters here referred to, but for any of the purposes to which under sec 113 (corresponding to sections 54 and 56 of this Act,) the Municipal fund may be applied, provided it "is calculated to benefit the inhabitants of any municipality, &c."

A municipality obtained a loan from Government for certain works outside its limits; as it could not incur expenditure on such an object outside its limits, but could only make a contribution towards the expenditure, it proposed to obtain a nominal loan from the District Local Board within whose limits the works were, and still itself carry out the works. Government in G. R. No. 4483 of 29th Oct. 1895, Gen. Dep., agreed in the opinion of its Law Officers as to the illegality of the expedient of obtaining such a nominal grant and treating the outlay of the municipality as a 'contribution' to a supposed substantive undertaking of the District Local Board.

Contribution to an Exhibition:—Now under sec. 56 (*m*) a municipality may, with Government sanction, provide funds for an exhibition *within* its limits

A proposal to add a clause to sec. 52 entitling a municipality to contribute to an exhibition *outside* its limits, but calculated to benefit the inhabitants of the municipal district, was not adopted.

G. R. 1207 of 26 March 1889 sanctioned a contribution towards the Exhibition of Native Arts and Manufactures held at Poona.

The Remembrancer of Legal affairs advised as follows:—"The questions referred for my opinion are—(*a*) whether municipalities can apply their funds to the purchase within their local limits of articles of local manufacture for exhibition at a place beyond those limits, (*b*) whether Government can sanction a contribution by one municipality to an exhibition held in a neighbouring municipality.

"4. (A)—The purchase of articles for a distant exhibition has nothing to do with the public safety or health: it remains then only to consider whether it is within the limits prescribed as to objects connected with the instruction and convenience of those residents in the municipality contributing.

"6. Now the purchase of articles of local manufacture for exhibition elsewhere can hardly without greatly straining the sense of words, be regarded as *instructive* to the residents of the area where they are purchased, and though in one sense the transaction might be regarded as a convenience, as giving an indirect stimulus perhaps to local industries, I do not think the convenience is of the kind contemplated by the Act. Apart from the fact that it is not a material, permanent and reproductive utility it is a convenience of which, obviously the whole of the local population would not equally share the benefits. One or two local industries would probably benefit to the exclusion of others, and the seller of milk, for instance, might perhaps reasonably object that he could derive no advantage from expenditure incurred in advertising the wares of artificers in brass. The exhibition of local manufactures would benefit individual industries rather than the community at large, and it is not, I think, open to municipalities to use their funds for such purposes.

"7. (B)—With regard to the question whether with Government sanction a municipality may contribute to an exhibition in a neighbouring district, the question is not so clear. The case cited in the margin shows that a fair, liberal interpretation is to be allowed as to the *bonâ fide* exercise of the discretion by corporate bodies in such matters.

Attorney General vs. *Corporation of Sunderland*, L. R. 2, Ch. D. 634.

"8. An exhibition of manufactures from distant districts may be very instructive to those who live sufficiently near to profit by it, and though I think that the sections quoted above authorising expenditure by municipalities and Local Boards on objects of an instructive or educational character refer rather to *permanent institutions* than to temporary exhibitions, there is nothing absolutely limiting the discretion of Government, should they see fit to sanction expenditure on *any* institution which in their opinion conduces to the spread of useful knowledge. An exhibition may be as useful as a museum, and may have as direct an educational influence, and if so, would come within the meaning of sub-section 21 of amended section 24, (*vide* Bombay Act II of 1884, Section 49).

"9. But the decision whether an exhibition is of purely commercial value or has a general education influence, is one, which I think, must in each case rest with the authority in whom the discretion is invested. If its chief object is the mere sale of wares and the extention of commerce, then it should apparently be self-supporting, since it is under the Acts no part of the duties or powers of municipalities or Local Board, to extend the market for any local trades. But if it is intended to open the eyes of a district to new inventions, to the means of economising labour, or to new departments of industry, I think, its educational power would justify contribution by a municipality sufficiently near in situation to come within its range. This appears to me to be consistent with the principles apparently approved in Government Resolution No. 4222, Gen. Dep. of 18th Nov. 1884.

8 **Throughout * * * or contiguous to such line of country.**—These words have been repealed by sec. 1 Bom. Act, III of 1903, as they were found unnecessary and led to difficulties in practice. For instance, it was found that water could not legally be supplied to buildings or works which were outside the municipal limits and on the opposite side thereof.

53. (1) It shall be lawful for the municipality to deposit at interest with the Bank of Bombay, or such other bank as may hereafter be appointed to conduct the business of His Majesty's treasury at Bombay, or with the sanction of the [2]Governor in Council in [3]any bank in the Presidency of Bombay, any surplus funds in their hands which may not be required for current charges, and to invest such funds in [4]public securities in the name of the municipality, and from time to time to dispose of such securities as may be necessary.

[1]Power to deposit and invest surplus funds.

(2) All surplus funds over and above what may be required for current expenses shall, unless deposited or invested as provided for in sub-section (1) be deposited in the local Government treasury or

Surplus not so deposited or invested how to be dealt with.

such other place of security as may be sanctioned in the rules of the said municipality.

1 **Banking funds.**—This section is a re-enactment of sec. 26 of the old Act, Bom. VI of 1873, with the difference that the funds may now be deposited in any Bank in the Presidency with the sanction of Government, and the investment may be in 'public securities' not necessarily "Government" as before. This is in accordance with sec. 122, Bombay City Act.

A proposal for legalising the practice reported to obtain in the Ahmedabad Municipality of lending out their surplus funds on the security of Government paper or other public security was considered, but rejected by the Special Committee.

Municipalities banking with Government.—Hitherto the practice has been for each municipality to have a separate treasure chest kept in the Government Treasury (whether Huzur Treasury or sub-treasury as the case might be) and for the money to be drawn from it by the Secretary in the presence of two Municipal Commissioners.

Government have now ruled (*vide* G. R. 812 of 23rd March 1886, Fin Dep.) that this practice must discontinue, and municipalities may either deposit their balances in the nearest Government Treasuries just as in a bank, or in a private bank whichever course they consider preferable.

The Accountant General's consolidated Circular U (present standing order, No. 80) on the subject is as follows:—

1. Municipalities are not obliged to place their funds in a Government Treasury, but when they do so their transactions should be regulated by the following rules:

I. No sums of less than Rs. 10 should be paid into or withdrawn from the treasury.

II. Sums paid in should be accompanied by a chalan in the ordinary standard form at use at the treasury and a "Pass Book" in which the amounts received will be acknowledged under the initials of the Sub-Treasury Officer, if the amount be received at a Sub-Treasury or of the Treasury Officer or Accountant (according to the amount received), if received at a District Treasury.

III. Sums required by the municipality for expenditure may be drawn on a cheque signed by the Secretary and two Members of the Municipal Committee, and will be cashed by the Treasury Officer after he has ascertained that the amount drawn is within the balance at the credit of the municipality.

IV. In accordance with chapter I, article 17, of the Civil Account Code, the cheque forms should be bound in books with counterfoils. Each cheque should bear a serial number which should be repeated on each cheque contained in it, together with the consecutive number of the cheque itself, and the drawing officer should notify to the Treasury upon which he draws, the number of the cheque book which he, from time to time, brings into use. Outside the book should be an order to keep it under lock and key in the personal custody of the drawing officer, who, when relieved, should take a receipt for the correct number made over to the relieving officer.

V. Standard cheque and Pass Book forms to be procured from the Central Press Bombay, on payment, must be used by all the municipalities banking with Government.

2. The accounts of Municipal Funds at Treasuries will be maintained under the same rules and on the same forms as "Personal Deposits" (standing order No. 77, paragraphs 9 to 12), but the daily total should be separately carried into the Cash-Book as "Municipal Funds."

The Superintendent, Government Central Press, will supply all municipalities with copies of the cheque and pass books on payment of cost price. (G. R. 2195 of 26th July 1889, Fin. Dep.)

3. Municipalities now having their cash chest at a District (Huzur) or Sub-Treasury, should be required to remove it and should be ordered to open a banking account in accordance with the above rules.

2 **Governor in Council.**—G. R. 3702 of 5 May 1915, Gen. Dep. negatived the proposal to delegate this power to the Commissioners.

3 **Any Bank.**—Postal Savings Banks are not intended for the deposit of municipal balances. (G. R. 1167 of 30th March 1885, Gen. Dep.)

Co-operative Society.—G. R. 3702 of 5 May 1915 Gen. Dep. held that a Co-operative Society is not a Bank for the purposes of this section. The business of a Co-operative Society is not banking, but, as is stated in the preamble to the Co-operative Societies Act, 1912, it is

a Society formed 'for the promotion of thrift and self-help among agriculturists, artisans and persons of limited means'. Moreover, under sections 30 and 31 of the Act, there are restrictions on borrowing and other transactions with non-members. In section 32 (1) a registered (Co-operative) Society is placed in a separate category from a Bank or a person carrying on the business of banking.

A 'Bank' is defined as 'a place where money is deposited for the purpose of being let out to interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it' (Wharton). A 'Co-operative Society' is defined as 'a Society established on the principle of a joint stock association for the production of commodities, or their purchase and distribution for consumption, or for the borrowing and lending of capital among its members' (Webster).

Government declined to take actions for the delegation to Commissioners of the power to sanction.

4 **Public Securities.**—See section 3 (18) for definition. Application having been made to Government to apply the provisions of sub-section (1) of section 7 of the Indian Securities Act, 1884, regarding the holding of Government Securities by holders for the time being of public offices," by G. R. 1710 of 5th June 1888, Fin. Dep., it was ruled that that term "public office" used in section 33 of the Indian Stamp Act, 1879, having been accepted by the Government of India as meaning an office "belonging or appertaining to the State," the same expression used in the Indian Securities Act applied only to a Government office and was therefore inapplicable to a municipality.

Mode of transferring Government securities to or by a Municipality.—Government securities to be transferred to a municipality should be transferred into the corporate name of "the Municipality of ," and not in the name of the President.

Government securities transferred by a municipality required that the common seal of the municipality be affixed to the transfer. (G. R. 1942 of 16th May 1889, Fin. Dep.)

As regards the affixing of the seal, see section 40, note 7.

CHAPTER. VI.

OBLIGATORY AND DISCRETIONAL FUNCTIONS OF MUNICIPALITIES.

54. It shall be the duty of every municipality to make [2]reasonable provision,

[1]Duties of municipalities.

(1) for the following matters [3]within the municipal district under their authority, namely:

[4](*a*) lighting public streets, places and buildings;

[5](*b*) watering public streets and places;

[6](*c*) cleansing public streets, places and sewers, and all [7]spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipality or not; [8]removing noxious vegetation; and [9]abating all public nuisances;

[10](*d*) extinguishing fires, and protecting life and property when fires occur;

[11](*e*) regulating or abating offensive or dangerous trades or practices;

[12](*f*) removing obstructions and projections in public streets or places, [7]and in spaces not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the municipality or belong to His Majesty;

[13](*g*) securing or removing dangerous buildings or places, and reclaiming unhealthy localities;

[14](*h*) acquiring and maintaining, changing and regulating places for the disposal of the dead;

[15](*i*) constructing, altering and maintaining public streets, culverts, municipal boundary-marks, markets, slaughter houses, latrines, privies, urinals, drains, sewers, drainage-works, sewerage works, baths, washing-places, drinking fountains, tanks, wells, dams, and the like;

[16](*j*) obtaining a supply or an additional supply of water, proper and sufficient for preventing danger to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, when such supply or additional supply can be obtained at a reasonable cost;

(*k*) naming streets and numbering houses;

[17](*l*) registering births and deaths;

[18](*m*) public vaccination;

[19](*n*) suitable accommodation for any calves, cows or buffaloes required within the municipal district for the supply of animal lymph;

[20](*o*) establishing and maintaining public hospitals and dispensaries, and providing public medical relief;

[21](*p*) establishing and maintaining primary schools;

[22](*q*) printing such annual reports on the municipal administration of the district as the Governor in Council by general or special orders requires the municipality to submit;

[23](*r*) paying the salary and the contingent expenditure on account of such police or guards as may be required by the municipality for the purposes of this Act or for the protection of any municipal property [and providing such accommodation as may be required by Government under section 77 of the Bombay District Police Act, 1890,]

and subject to such reasonable provision as aforesaid,

[24](2) for the following special matters, namely:

[25](*a*) providing special medical aid and accommodation for the sick in time of dangerous disease; and taking such measures as may be required to prevent the outbreak of, or to suppress and prevent the recurrence of the disease;

[26](*b*) giving relief and establishing and maintaining relief works in time of famine or scarcity to or for destitute persons within the limits of the municipal district.

Liabilities of municipalities in the exercise of their duties and powers.—*A local authority exceeding or misusing its statutory powers.*—An Act like a municipal Act which touches the private rights of individuals must be carefully construed, without unwarrantable severity on the one hand or unjustifiable levity on the other, I. L. R. 27 Bom. 221 referred to.

The exercise of its discretion by an authority like a municipal body in respect of a matter within its jurisdiction, when that discretion has been honestly exercised, cannot be controlled by an action in a Civil Court. If the discretion is capriciously or perversly exercised and injury results to the plaintiff, he may then have a cause of action but not till then. I. L. R. 25 Mad. 118; 26 Cal. 811; 22 Bom. 230 referred to. See 6 Ind. Cas. 431.

It is well settled that a public body like a municipality invested with statutory powers, must take care not to exceed or abuse their powers. If they act beyond their powers, they have to make compensation to the persons sustaining damage by reason of their unlawful proceedings. 74 L. J. Ch. 629; (1905) A. C. 426; 93 L. T. 143; 54 W. R. 129; 3 L. G. R. 1120; 69 J. P. 425; 21 L. T. R. 686 referred to (*Ibid.*).

Rights of individuals to compel municipalities to do their duty.—The rights of private individuals when aggrieved to compel obedience to local Acts is laid down in various cases. See *Yakicum* vs. *King* (1899) 1 O. B. 444; *Mr. Inlait* vs. *Pentypried Improvements Co.* (1891) 61 L. J. (Q. B.) 764; *Kerr* vs. *Co-operation of Preston* (1876) 6 Ch. D. 463.

Liabilities of Municipalities for causing nuisances affecting private rights:—The decision appears to turn on whether the nuisance caused is in the exercise of obligatory or only discretional powers. The latest ruling on this subject is the case of *Muhammad Mohidin Sait* vs. *Municipal Commissioner, City of Madras* (1901). I. L. R. 25, Mad. 118 (see note 14, sec. 54, page 133) where the whole question is very ably discussed by the learned Chief Justice. If nuisance caused by a statutory body in the exercise of obligatory statutory powers, then, even though an actionable nuisance be caused, the municipality is protected, so long as there is nothing unreasonable or negligent in the exercise of their powers. If, however the municipality is acting only under discretional powers, then that discretion must be exercised with due regard to private rights. (See notes sec. 96, and sec. 135).

"In a suit for an injunction to prevent, on the ground of nuisance, the use of certain premises of the defendants as a slaughter-house, it was alleged that if so used, the consequences would be to endanger the health and materially interfere with the physical comfort and convenience of the occupants of plaintiff's houses.

Held, that assuming such user would have these consequences, such user would be a nuisance, but the injunction sought could not be granted, unless it were reasonably clear that the user of the said premises as a slaughter-house whould have these consequences: but that if this was reasonably clear, an injunction might be granted at the discretion of the Court.

Held, on the issue of fact, as to whether it was reasonably clear upon the evidence that the user of the defendant's premises as a slaughter-house would endanger the health or materially interfere with the physical comfort and convenience of the inmates of plaintiff's houses, that the finding must be adverse to the plaintiffs, with the result that the plaintiffs had failed to establish a title to the relief claimed upon the above grounds.

There is no authority for holding that the exercise of a lawful business, if it be not on other grounds a nuisance, amounts to a nuisance, merely because it diminishes the value of property in the neighbourhood; diminition of the value of one man's property caused without injury to the property itself, or to its enjoyment, by the legitimate use of his own property by a neighbour, amounting only to "*damnum absque injuria.*"

Held further, that a Municipal Committee in the Punjab is not entitled to justify by statutory authority every nuisance committed in the fair and reasonable exercise of the powers conferred under the municipal Act. There is a material distinction between the case of statutory powers given by the legislature when the legislature directs that they shall, at all events be done, in the case of similar powers when the exercise of the powers, at all, and the time and place of exercise are discretionary. When a company or public body can construct its work without injury to private rights, it is in general bound to do so. Further, as a rule of construction of statutes those who seek to establish that the legislature intended to take away the rights of private individuals, lie under the burden of showing that such intention appears by express words or necessary implication.

Although, therefore, a Municipal Committee is empowered to erect a slaughter-house, subject to the approval required by section 92 of the Panjab Act, and by the authority in section 68 to apply the municipal fund for the construction, establishment, and maintenance of works of public utility, there is nothing in the Act which requires a Committee to exercise this power, but it has an absolute discretion whether it shall exercise this power, and as to the time of its exercise; as to place also, it has a discretion, not absolute but limited, the approval of the Deputy Commissioner being necessary. There is however, nothing in the Act to indicate that a Committee is authorised to set up an institution of the above kind to the infringment of the private rights of other persons. (Panjab Record No. 106 Civil, of 1888.)

Where an act complained of is found to be in fact a public nuisance, as in *Attorney General* vs. *Barker* (1900) 83 L. T. 245, private individuals suffering from the nuisance have obtained redress by mandatory injunctions on the information of the Attorney General.

Section 91, Civil Procedure Code provides:—

"91. (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case."

By the General Clauses Act 'public nuisance' shall mean as defined in the Indian Penal Code, section 268 of which says "a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger, or annoyance, to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance, to persons who may have occasion to use any public right."

The Municipal Commissioner, Bombay, gave permission to defendant to erect his building beyond a certain height. Afterwards 2 persons, representing that the erection was in contravention of the Act, moved the Advocate General under sec. 91 Civil Procedure Code to apply to the High Court for a mandatory injunction against defendant ordering him to pull down so much of the erection as exceeded the limit allowed under the Act.

Held (1) that the Municipal Commissioner had power to give the permission (2) that the Advocate General in India exercises all the powers of the Attorney General in England, (3) that in England the Attorney General has power to apply to the Court for an injunction not only in cases where there has been an actual public nuisance for which there would be a common law remedy, but also in cases where there has been only a constructive public nuisance or a public nuisance in law, by which is meant that which is only wrong because it contravenes the provisions of an Act, *ex gratia*, building beyond a prescribed height. In the former class of cases to which *Attorney General* v. *Barker* (1900) 83 L. T. 245 belongs, the Attorney General has acted at the relation of private individuals, but in the latter class of cases, unless proceeding against a corporation or company itself, he acts at the relation of the local authorities. The power given under sec. 91 C. P. Code is restricted to public nuisances in fact. In the event of a public body or local authority wilfully misusing, or exceeding their statutory powers, the Attorney General might very well proceed by information against them to compel them to keep within the law, but the Advocate General could hardly proceed against private individuals who could not possibly know whether the statutory powers of such local authorities had been exceeded and had acted upon the faith of their executive orders, and ask for an injunction of a ruinous character against an innocent individual. If the Municipal Commissioner had acted *ultra vires* the Advocate General should rather have directed his application against such officer instead of defendant.

No mandatory injunction for a mere nuisance in law would be asked for in England, much less granted, except where it had been created and persisted in in defiance of local authority and that local authority had not sufficient powers to enforce compliance with the law. This could never be the case under the Bom. City Act as the Commissioner has full powers to act. Where however, believing that he is carrying out the intention of the legislature he grants permission and it is found that the permission was *ultra vires* as might possibly be in this case, it would be unjust to require persons who had erected costly buildings under that permission to pull them down. Though in a proper case the Court might under sec. 56 (b) of the Specific Relief Act (*vide* note 6 sec. 22) grant an injunction, still it was for the Court to decide whether in the present case the proper remedy was the extreme one of demolition. Under all the circumstances that defendant got permission to build, completed the building without any objection being made, that the building was in no sense a nuisance in fact but rather an ornamental structure, the Court declined to issue the injunction, and held that the suit ought not to have been brought. (*The Advocate General* vs. *Haji Ismail Hashim*, 12 Bom. L. R., 274.)

Liability of municipality for negligence, how far it extends.—Where injunction can be granted.—Injunction should be in general terms.—Vis major, to afford a defence, must be the proximate cause, the *causa causans*, and not merely a *causa sine qua non* of the damage

complained of. Neglect to provide for conditions not exceptional may involve liability although *vis major* or exceptional conditions be also established. Where the damage caused was due to the insufficiency of precautions taken by the defendant, in constructing bridges and embankments in a creek for carrying a duct line, to cope with conditions which might reasonably have been anticipated, the defendant is liable. The mere fact that *vis major* co-existed or rather followed on the negligence is no adequate defence. Before an act of God may be admitted as an excuse the defendant must himself have done all that he was bound to do.

A plaintiff before he can ask for an injunction must prove that he has sustained such a substantial injury by the acts of the defendant as would have entitled him to a verdict at law in an action for damages.

The defendants for the purpose of laying a water duct made embankments and bridges in a creek, which caused damage to plaintiff by flooding his lands. The lower appelate Court, issued an injunction in this form, "Let an injunction issue ordering the defendant municipality to provide sufficient water ways in their duct line between miles 29-4858 and 33-265 so that plaintiff's lands will not be flooded in consequence of the line acting as a material obstruction to the floods &c."

Held, that it was desirable in such a case to avoid all approach to particularity of direction; and that the injunction should be in general terms, *viz*, an injunction restraining the defendant Corporation from flooding the lands of the plaintiff or causing them or permitting them to be flooded by the works of the defendant Corporation. (*Municipal Corporation of City of Bombay* vs. *Vasudeo*, (1904), 6 Bom. L. R. 899.)

Damage by reclamation works, negligence must be proved to make municipality liable, where damage due to excessive rain fall.—The Hubli Municipality, a body corporate under the District Municipal Act (Bom, Act III of 1901) took steps to provide a Municipal Cotton Market and they selected for that purpose a site of a large and ancient tank which had largely silted up. The southern boundary of the tank was an embankment. In reclaiming the bed of the tank, the municipality utilized a part of the embankment and made provision to prevent the flow of water. In the month of June 1907 there was a sudden and extraordinary heavy rainfall at Hubli which practically overflooded the whole municipal area and a quantity of goods in the plaintiffs' Ginning Factory which was to the south of the tank was washed away or damaged. Thereupon the plaintiffs' brought a suit against the municipality to recover damages alleging negligence on the part of the defendants in carrying out the reclamation work. The defendants denied the plaintiffs' allegation and answered that the damage to the plaintiffs' goods was the result of the abnormal heavy rain in June 1907 and that no precautions on the part of the defendants could have averted the damage.

Held, that the suit was not maintainable. The onus of proof of negligence lay on the plaintiffs, and if the neglect in the execution of their statutory powers and duties was not brought home to the municipality, a suit against them must fail as being unsustainable in law, howsoever great the damage the plaintiffs might have suffered from the extraordinary flooding uncontrolled by the old tank dam.

RAO, J.:—The damage was mainly, if not wholly, attributable to the extraordinary fall of rain. It was an occurrence in the nature of *vis major* for which the defendants were not responsible. 6 Bom. L. R. 899 referred to. (*Municipality of Hubli* v. *Lucus Eustratio Ralli* (1911) 35 Bom. 492).

Liability for neglect to repair drainage channel.—Where drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flowed across the road into the plaintiffs' field and caused damage to the plaintiffs and the damage was found to be due, not to the authorized drainage work but to the neglect of the drainage channel which the municipality was bound to repair. *Held*, that the municipality was liable to the plaintiffs in damages.

Per Curiam:—The exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repairs so that they shall not be a nuisance to the neighbouring owners. *Borough of Bathurst* v. *Macpherson* (1879) 4 App. Cas. 256, *Municipality of Picton* v. *Geldert* [1893] A. C. 524, referred to, *Dholka Town Municipality* v. *Patel Desaibhai*, (1913) 38 Bom. 116, 15 Bom. L. R. 1034.)

Non-liability of municipality for damages for non-repair for road.—The plaintiff, an inhabitant of Ahmedabad, having brought a suit against the municipality to recover damages sustained by him in respect of an injury caused to his horse and carriage in consequence of the neglect of the municipality to repair a road.

Held that as the default leading to the damage was a mere non-feasance the suit must fail, for the statute does not impose upon the municipality a duty towards the plaintiff which they negligently failed to perform. (I. L. R. (1904) *Achratlal* vs. *Ahmedabad Municipality* 28 Bom. 340; (1904) 6 Bom. L. R. 75.) See 33 B. 393 which distinguishes this.

In this case it was argued for defendant that there was nothing in the Act to make a municipality liable for mere non-repairs : *vide* Sander's Law of Negligence, p. 131 ; *Atkinson* vs. *New Castle Waterworks Co.* ; that no action for non-user of statutory powers can lie, *id* 130-132 ; 22 L. T. Rep. 295, 887 ; Mew's Digest of English Case Law, Vol. X p. 94 and I. L. R. 17 Bom. 307 referred to as on negligence only. A corporate body cannot be held liable in damage for non-repair. *Cowley* vs. *The New Market Local Board* (1892) A. C. 345 ; *Municipality of Picton* vs. *Geldert* (1893) A. C. 524 ; *Thompson* vs. *Mayor of Brighton* (1894) 1 Q. B. 332 ; *Municipal Council of Sydney* v. *Bourke* (1895) A. C. 433. Also *Sanitary Com's of Gibraltor* v. *Orfila* (1890) 15 App. Cas. 400 at p 411.

For plaintiff it was argued that as owners of the road, the municipality was liable for neglect. *The Queen* v. *Inhabitants of Dutsurfield* (1863) 4 B S. 158, 161 ; No distinction between non-feasance and mis-feasance ; *White* vs. *Hindley Local Board of Health* (1875) L. R. 10 Q B. 219 ; *Henley* vs. *Mayor and of Lyme*, (1828) 5 Bing. 91 ; *Corporation of Calcutta* v. *Anderson* (1884) 10 Cal. 445 at p. 462 ; *W. Kirmon Penson* (1853) 8 Exch. 319.

Municipality liable for misfeasance.—The plaintiff sued to recover damages from the defendant municipality for injury done to his property by storm water. The water had collected in an adjoining ditch, which the municipality had not kept in a state of repair, but had allowed it to be choked with the rubbish of the town. They constructed a dam in the adjoining creek, but allowed the sluices at the dam to be choked up with weeds, sedges and silt. The consequence was that the storm water which had collected in the creek passed on to the plaintiff's land and did damage.

Held that there was misfeasance on the part of the municipality, for they had turned their works by their negligence into a nuisance so as to throw the water collected on their property, the creeks, on to the plaintiff's land, and that, therefore, they were liable for the damage caused thereby. *Borough of Bathurst* v. *Macpherson* (1879) 4 App. Cas. 256 and *Municipal Council of Sydney* v. *Bourke* (1895) A. C. 433, at p. 441, followed, *Whalley* v. *Lancashire and Yorkshire Railway Co.* (1884) 13 Q. B. D. 131, at p. 137, referred to.

I. L. R. 28 Bom. 340 (6 Bom. L. R. 95 distinguished as being only a case of non-feasance.

But, as has been pointed out by the House of Lords in *Mayor &c of Shoreditch* v. *Bull*, (1904 20 T. L. R. 254, "the distinction between non-feasance and mis-feasance might be carried too far," and "in some cases non-feasance might be equivalant to mis-feasance." And of the latter *Borough of Bathurst* v. *Macpherson*, 1879) 4 App. cas. 256 affords an illustration. The facts of that case were as follows :—The Borough of Bathurst had costructed a barrel drain under or in proximity to the highway, the drain having fallen into disrepair, a portion of the highway subsided into it, leaving a hole into which the plaintiff's horse fell as he was riding along the highway, with the result that he sustained personal injuries. The Privy Council held upon these facts that the municipality having constructed the barrel drain was bound to keep it in a state of repair which would prevent its causing a dangerous hole to be formed in the highway. The decision is explained in these terms by the Privy Council in *Municipal Council of Sydney* v. *Bourke* (1895) A. C. 433 App. 441.

The *ratio decidendi* was that the defendants had caused a nuisance in the highway. It was entirely independent, of the questions whether there was an obligation to keep the highway in repair, and whether any person injured by the breach of such a duty could maintain an action. The case was not treated as one of mere non-feasance, and indeed it was not so. The defendants had created a nuisance. Having made the drain, and failed to keep it in such a condition that the road would not fall into it, they were just as much liable as if they had made the excavation without costructing the drain, and the road had cosequently subsided and become founderous". That is a clear act of misfeasance and falls within the principal of law illustrated in *Borough of Bathurst* v. *Macpherson*. The respondent's act is similar to that of a man who brings water on to his own land, and dams it up so that if it breaks away it must be a danger to his neighbour and must do him injury ; there the man is liable, though he does nothing to let the water out, but it bursts away without any subsequent act of his. (See the judgment of Brett M. R. *in Whalley* v. *Lancashire and Yorkshire Railway Company.*) 1884, 13 Q. B. D. 131 at p. 137. (I. L. R. (1909) 33 Bom. 393 *Rajendralal* v. *Surat City Muntcipality.*)

Nuisance not actionable if done under powers conferred by Act.—Plaintiff sued for an injunction restraining the municipality from placing a refuse cart near his house. *Held*, the provision of refuse carts is essential for cleansing public streets. It is therefore an obligatory duty necessarily deducible from the obligatory duty of cleansing public streets, laid upon the municipality by sec. 54 (1) (*c*) of the Act. Though the location of a refuse cart near a residential house is a nuisance, no action in tort will lie in respect of the exercise with judgment and caution of powers conferred by the Legislature. (*Hasraj Hirji* v. *Karachi Municipality*, 4 S. L. R. 65 ; 1910, 8 Ind. Cas. 208.)

Public latrines—injunction against, for nuisance.—In answer to a suit brought against the Municipal Committee of Dehli for an injunction to prevent, on the ground of nuisance, the use of a public latrine recently erected by the Committee, it was pleaded that the defendants were acting under statutory authority, and that the alleged nuisance (if any), being a necessary consequence of the use of the powers and duties imposed on the Committee by the Legislature, could not be restrained by injunction. *Held* that the power claimed by the Committee under section 68, sub-section (2) (*a*) of the Panjab Municipal Act, 1884, did not exist: that the enactment contained no express authorisation to the defendant to construct public latrines. The section merely rendered it lawful for the Committee to apply their funds towards payment, *inter alia*, of the charges and expenses incidental to the construction, maintenance, improvement, cleansing and repair of latrines: it implied a discretionary power to construct public necessaries, but it conferred no compulsory power to acquire land for the purpose of erecting such buildings thereon in any specific locality or at any place which might be deemed suitable by the Committee. Panjab Record, No. 106 of 1888 referred to and followed.—No. 103, P. R. 1892.

Note.—This ruling would not however apply to this Act, as under this section the construction, &c., of public latrines is an *obligatory* duty. See 4 S. L. R. 65 note 1 *supra*.

1 **Origin of section.**—This section is a re-enactment of section 24 of the old Act of 1873 as amended, with some additions. Compare with sec. 30 Bombay Local Boards Act. (Vide Cumming's Local Board Manual.)

"The Madras Municipal Act is not a "private" Act. "When a public body is entrusted by the Legislature with the duty of making public improvements, and powers are entrusted to it for such purpose, those powers will not be subject to a restrictive construction, though they interfere with private rights. (*Branson* vs. *Municipal Commissioner of Madras*, I. L. R. 2, Mad. 362.) This was followed in 9 Ind. Cas. 1000.

See sections 178 and 179 as to result of non-performance of these duties.

Buildings or work near cantonments.—In accordance with orders contained in G. R. Govt. of India No. 1287, M. W.—"Defences" dated 14th June 1899 (Military Depart.) no works or buildings are to be erected in the neighbourhood of any cantonment without the concurrence of Government.

2. **Reasonable provisions.**—The word "adequate" was used in the old Act; a proposal to substitute "so far as its funds will admit" was rejected.

The following remarks of the Remembrancer of Legal Affairs referred to in the preamble to G. R. 565 of 29 Feb. 1892, Gen. Dep., are noteworthly, the necessary changes under the new section of 'adequate' to 'reasonable' being made:—

(1.) A municipality is bound under section 24 of Bombay Act VI of 1873 (now section 54,) to make adequate provision for the several matters named in that section. The municipal property and funds are the means designated as those out of which it is to make such provision; but inasmuch as the obligation to make adequate provision for the several matters specified is absolute, and there is no limit placed by law on the amount of the funds which it may raise, it follows that every municipality is bound to take measures to place itself in possession of sufficient funds to enable it to fulfil all its obligations. The word 'adequate' protects the inhabitants of a municipal district from over taxation by the municipality, because that body will not be justified in raising and spending money for purposes in excess of what is adequate for the wants of the district; but a municipality is bound, on the other hand, to tax the people sufficiently to secure what is adequate; it may not make an inadequate provision for the matters above-mentioned and plead want of funds as an excuse.

(2.) The determination of what is 'adequate provision' falls ultimately upon the Governor in Council under sections 42 and 43 of Bombay Act II of 1884 (now sections 178 and 179) (or in Sind, so far as concerns section 42, on the Commissioner), and it is, therefore, just and proper that a municipality which is inclined to evade its responsibilities should be advised by the Governor in Council (or in Sind, by the Commissioner) what amount of provision will, in the event of a case coming up for consideration under either of the above section, be deemed adequate."

See note 1 to section 178.

By sec. 74 Government may direct a municipality to impose a tax.

A municipality has no power to bind itself or its succesors to apportion the municipal fund or income to different local divisions of the district without any consideration as to their relative requirements and of the district as a whole.

In respect to the duty to provide public medical relief and other matters, in construing the words "reasonable provision," regard should be had not only to the number of inhabitants in the municipal district but also to the resources of the municipality.

3 **Within the municipal district.**—See section 52, proviso, as to expenditure 'beyond municipal limits.'

The Panjab and Madras Acts provide "also without the said limits" with the sanction of Government.

4 **Lighting of public streets, places and buildings.**—As to public buildings, see note 7 to section 50.

Lighting of Police Stations.—Under this section, municipalities are bound to provide for the exterior lighting of Police Stations. They should therefore everywhere be called upon to provide the exterior light required for the different Police Stations within municipal limits. The interior lights will be provided by Government. (G. R. 6718 of 19th Nov. 1886, Jud. Dep.) A Town Planning scheme may make provision for this matter.

Divali illuminations.—The expenditure by the municipality on Divali illumination of the municipal office and other places in the bazaar is not justified under this section. It might be justified under section 56 (*m*), but only with the previous consent of the Commissioner which however was not obtained. G. R. 5398 of 11th Sept. 1906, G. D. sanctioned a civil suit being brought against the municipal councillors who voted for the expenditure if they failed to refund the money.

5 **Watering of public streets and places.** "*Street watering.*—G. R. 1565 of 28th April 1894, Gen. Dep. ruled that as this is mainly required for conservancy and not for road repairs, so it should continue to come under "Conservancy," but expenditure on any watering required for repairs should form part of repair estimate and should not be debited against street water- ing under 'Conservaney."

6 **Cleansing public streets, places &c.**—Section 48 (*m*) provides for by-laws being made for "regulating sanitation and conservancy, &c."

Sanitation.—Attention should be invited to the following remarks of the Army Sanitary Commission, and every endeavour made to impress upon municipalities the extreme importance of adopting measures for improving the sanitary condition of their towns and villages, as far as it lies in their power. (G. R. 2288 of 8th Aug. 1887, Gen. Dep.)

"1st.—The cardinal requirements everywhere is cleansing and safe removal and disposal of house sewage.

"2nd.—In all the smaller towns it is probable that the most efficient arrangements regarding drainage, at least for the present, will be to level and improve the surfaces of public streets, lanes, and house compounds, to provide ready escape for rain and surface water by well made impervious surface drains, properly graded to the out-fall, so that all water may flow rapidly away and no where form surface pools, and to combine with this an efficient conservancy system, to keep as much of the house sewage as possible out of the surface drains.

"3rd.—Shutting up bad wells and improving and protecting existing wells from subsoil pollution in the manner advised in our suggestions for improving Indian towns and villages.

"And lastly, for anything that appears to the contrary, a little more animation and activity might be beneficially exercised to forward sanitary work both in towns and villages. (G. R. 3349 of 29th Aug. 1882, Gen. Dep.)"

Sanitary Survey.—G. R. 761 of 25th Feb. 1891.—In letter No. 82, dated 22nd July 1887, Home Department, the Government of India suggested that a sanitary survey of each municipality in the province should, with as little delay as possible, be undertaken by the Sanitary Commissioner and the local engineering authorities, and that plans and estimates should be prepared of all the improvements necessary to provide each town with an efficient system of drainage, water-supply and conservancy. The plans so prepared were to be executed from year to year as funds became available, the object aimed at being persistently kept in view until it was completed. The Commissioners were directed to meet and report how the orders of the Government of India could be carried out and what would be the initial cost of preparing estimates of works and how the expenditure should, in their opinion, be met. They stated their opinion that the first thing necessary was to get some idea of what had been done and what remained to be done under the several heads of water-supply, drainage and conservancy, and submitted a tabular statement for all the municipalities in the Presidency proper. This proposal was approved in G. R. No. 3463, dated 16th November 1887.

2. With regard to conservancy arrangements the Commissioners in their joint report, suggested that the Sanitary Department should record its views on the subject, bearing in mind what was sufficient, practicable and financially feasible in the case of each town, and that each municipality should then be called upon to complete the conservancy establishment to the required strength. The requisite reports were prepared by the Sanitary Department and were directed by G. R No. 1086, dated 9th April 1888 to be handed over, as proposed by the Sanitary Commissioner, to the Collectors for such action as should to them seem practi-

cable and expedient. His Excellency the Governor in Council trusts that the Collectors have kept the object of these reports steadily in view and that they lose no opportunity of pressing upon the attention of the municipalities as opportunities offer the necessity of all such reforms as are within their power to carry out.

8. The Commissioners should give in their annual administration reports on the working of municipalities detailed information as to the progress made in providing each town with a system of drainage, water-supply and conservancy as desired by the Government of India in the letter referred to above. The Sanitary Board should also be requested to include in its anual report a brief but clear account of the water-supply of all municipal towns, as directed in para. 4 of the letter from the Govt. of India No. 366, dated 5th Dec. 1889, printed in G. R. No. 5307, dated 24th idem.

9. In conclusion His Excellency the Governor in Council cannot avoid noticing that in several cases where reforms appear to be much needed their postponment is attributed to want of adequate funds; whilst at the same time he observes that considerable cash balances stand to the credit of these municipalities, and that they are entirely free from debt. His Excellency trusts that the Boards will never overlook the supreme necessity of paying the most careful heed to all matters that affect the health of their fellow townsmen, and will not hesitate to consider whether, in order to maintain immunity from debt, they are justified in postponing such improvements as appear to be really urgent.

As to the latest policy of Government in regard to Sanitation see para. 18 of the Resolution set out in the Preface to this edition; also Part II, Appendix N.

How to check the growth of insanitary conditions?—With G. R. 739 of 28 January 1914 G. D. copies of a note by Mr. J. P. Orr, on this subject was directed to be communicated to all municipalities and in the case of the larger municipalities, they were invited to take into consideration the question of the incorporation in their building rules of principles of the $63\frac{1}{2}°$ air plane and light plane rules as set forth in para 6 of the note.

The object aimed at in this note viz: the necessity of measures to prevent the increase of congestion of buildings over land in all large or growing towns, can now be attained under the provisions of the Bombay Town Planing Act 1915.

Relief of congestion in cities—A sanitary scheme.—G. R. 5775 of 8 Nov. 1909, Gen. Dep. deals with a scheme proposed by the Collector (*vide* G. R. 701 of 5 Feb. 1908) and approved of by Government, for the relief of congestion in the town of Hyderabad, Sind, the municipality of which was unable to provide the funds required either from revenue or by means of a loan. By a trust deed Government transferred certain lands to the municipality revenue free on certain conditions. It was also stipulated that in the event of the Town Planning Act being extended to the municipality it should surrender to the local authority appointed under that Act all the lands covered by the agreement as well as the balance (if any) at the credit of the Improvement Fund formed under the deed.

7 **Open spaces.**—These sentences beginning with the words "and all spaces * * * or not," and "and in spaces * * * His Majesty" are new. The provision is based on the grounds that such places belonging to Government will be few in number, the cleansing of them will not be costly, and as they are within municipal limits and can best be looked after by the municipal conservancy establishment, the municipality may fairly be required to maintain a duty which is for the general benefit of the inhabitants and has hitherto been carried out without objection.

"The word 'public' in regard to places and buildings, is not defined in the Act; but having regard to the use of the word in sections 17 and 24 (now sections 50 (2) and 54), it may be inferred that it is intended to cover only such property as the public have a right of using or which exists for the public benefit. All property which vests in Government is not public property in this sense. Building sites for instance, which Government retain in their own possession only until they are able to part with them on suitable terms are not such property. The public have no right to make any use of such sites and they may at any time be sold or let to private parties, who would at once become liable, under section 55 (*now* 129) to a penalty, if they allowed any filth to remain thereupon. Sites which are not built upon do not materially differ from sites covered with buildings. For the conservancy of the latter, the owner or occupier is held responsible, whether they belong to or are in the occupation of Government or of a private person; and the same law is properly applicable to lands vesting in Government which are not built upon, but which are reserved for public use.

"2. On these grounds, the Karachi Municipality is not legally liable to keep clean such open spaces belonging to Government as those which are referred to in the correspondence. (G. R. 1914 of 5th June 1888, Gen. Dep.)

See note 12 to sec. 50, p. 113, and sec. 127 (1).

8 **Noxious vegetation:**—See the District Police Act VII of 1867, sec. 34.

9 **Public nuisances:**—For definition of '*nuisance*,' see sec. 3 (15). The term "public nuisance" is not defined; reference will therefore have to be made to the definition given in sec. 268 of the Penal Code, which is also that used for "nuisance" in the Madras Act.

As to mandatory injunction for abatment of public nuisances see 12 Bom. L. R. 274 and as to suits on account of nuisances see note 1 supra.

10 **Extinguishing fires.**—See section 48 (*n*).

Where a municipality purchased through Govt. a narrow strip of land at the entrance of a private street for the purpose of widening the street, in order to facilitate the effective use of fire-engines. *Held* that the acquisition for such purpose was within the powers of the municipality, as it comes under one of the duties of the municipality to extinguish fires, &c., and to take any other measure likely to promote the public safety, health, convenience, &c., (see section 56 (*l*), and that the Civil Courts have no jurisdiction to restrain the municipality from exercising such powers. All questions of relative necessity, advantage, or facility are questions of municipal detail and it is not the province of a Civil Court to regulate these details. (*Shastri Ramchandra* v. *Ahmedabad Municipality*. I. L. R. 24, Bom. 600.)

Fire insurances.—H. E. the Governor in Council considers that it is the duty of all municipalities to protect the rate-payers from losses on account of property destroyed by fire by a proper use of the facilities that insurance offers in most cases. Municipalities that allow avoidable loss to be incurred by neglect of such obvious precautions will incur a grave responsibility. (G. R. 4944 of 22nd September 1909, Gen. Dep.)

11 **Offensive or dangerous trades or practices:**—Sections 151—153 relate to "Nuisances from certain trades and occupations." Sec. 48 (1) (*b*) (iii) provides for by-laws for licensing, regulating, &c., places referred to in sec. 151 (*b*.)

12 **Obstructions & projections in public Streets, &c.:**—See sections 113 & 122.

13 **Dangerous buildings-unhealthy localities:**—See sec. 119.

14 **Places for disposal of dead:**—14 "Acquiring and maintaining" are substituted for "providing" in the old section.

See section 48 (1) (*g*) for rules regulating the disposal of the dead.

See section 150 as to closing of such places. Before this new Act, a municipality had not the power to close a burial place. The only course then was for the Magistrate to act under the provisions of Chapter X, of the Criminal Procedure Code regarding public nuisances. (G. R. 2231 of 29th June 1883.)

When the Act of 1884 was before the Legislative Council, it had been proposed to insert after the words "changing" the word "closing" but the Special Committee, though admitting that it was desirable that the municipality should have power to close burying grounds which may be or have become dangerous to the public health, thought that the exercise of this power by a municipality might be such as to excite violent party or religious agitation, and looking to the views expressed by the Government of India in 1874 on the subject of the exercise of similar powers by Government as liable to the construction of interference with religious feelings, hesitated to accept the suggestion. They, however, added that the word "closing" might perhaps be inserted, if accompanied by the proviso that the previous sanction of the Governor in Council should be obtained before places for the disposal of the dead are closed by municipalities. This, however, was left to be done in the new Act as shown in sec. 150.

Opening of burial and burning ground not an actionable nuisance.—By section 392 of the Madras Act, 1884, the Municipal Commissioners "shall . . . . provide a sufficient number of convenient and fitting places for burial and burning grounds, either within or without the limits of the city and may acquire land for this purpose;" and section 458 gives a right of action to any person aggrieved by the failure of the Commissioners to perform a duty imposed on them by the Act. Plaintiff was the owner of a bungalow, factory and garden in the neighbourhood of Madras. In 1896, the municipality acquired land close to plaintiff's and opened a burial and burning ground thereon. Plaintiff alleged that his premises had, in consequence thereof, become unhealthy, insanitary, and unfit for residential purposes, that he had been unable to work his factory, and that his property had deteriorated in value. He accordingly sued for an injunction restraining the defendants from using the land acquired by them as a burial and burning ground, and for damages. No negligence was alleged or shown regarding the manner in which the burial ground had been used. There was some evidence that the burning ground was to some extent a source of nuisance to any one who occupied plaintiff's premises, and that the market value of the premises had been depreciated by the opening of the burial ground:—*Held*, that no actionable nuisance had been proved. *Per* Sir ARNOLD WHITE, C. J.—Even if an actionable nuisance had been proved, the defendantfs were protected. *London and Brighon Railway Co.* vs. *Truman*, (L. R. 11 App. Cas., 45), followed; *Metropolitan Asylum District* vs. *Hill*, (L. R., 6 App. Cas., 193), distinguished. The mere fact that a neighbouring land owner has sustained damage from the establishment

of a burning and burial ground does not show that the site selected is not "convenient and fitting." The words "within or without the limits of the City" must be read *secundum subjectam materium* and with reference to the requirements of the community in connection with the disposal of corpses and the general necessities of the case. By section 433 of the City of Madras Municipal Act, the period of limitation for the commencement of suits against the Commissioners in respect of any thing done in pursuance of the powers given by the Act is fixed at six months. *Semble*, that plaintiff's cause of action, if any, arose when the site began to be used as a burial ground, namely in 1896, and that the claim was barred by limitation, both under section 433 and the general law. (*Muhammad Mohidin Sait* vs. *The Municipal Commissioners for the City of Madras*, I. L. R. 25 Mad., 118.) See I. L. R. 19 Mad. 464 noted sec. 150.

Burial of Paupers.—There appears to be no objection to paying the reasonable expenses of burying or burning a deceased intestate from the intestate's property. But it is not legal to credit any part of such property to the municipality or to create a fund in this manner to meet the cost of burial or cremation of other strangers who die within municipal limits. (G. R. 3563 of 26th October 1881, Gen. Dep.)

"A municipality is under no legal obligation to pay the burial or cremation expenses of a pauper who dies within its limits without leaving any property from which to defray such expenses.

"2. Although intestate property is held in deposit by Government for the eventual benefit of all concerned, such property practically belongs to Government after a sufficient length of time has elapsed to make the chance of a claim being put forward infinitesimal.

"3. The expense of the disposal of dead paupers is usually undertaken by the State; and, in the presidency town Government reimburse the amount incurred in such behalf by the Police Commissioner."

On a careful consideration of the whole question, His Excellency the Governor in Council is pleased to direct that all legitimate expenses incurred by a municipality in disposing of the bodies of paupers dying within its limits should be repaid to the municipality by Government. (G. R. 1675 of 8th May 1882, Gen. Dep.)

This order has not retrospective effect. (G. R. 2540 of 8th July 1882, Gen. Dep.)

The following resolution of Government as to the practice in similar cases outside of municipal limits is noteworthy:—

"The expenses incurred by the Muhammadan, who undertook the funeral of the deceased in the case in question, cannot be repaid to him. As a rule the Muhammadan community in each district should bear the expense of burying such of its members as may die there. Expenditure by Government should, as far as possible, be limited to the case of paupers, whose caste or religion is unknown, or who have been repudiated by their community, and in order to avoid undue demands, should be confined to the smallest possible sum in each instance. The Governor in Council sees no reason therefore for raising the maximum allowed for the funerals of Muhammadans above the sum of Rs. 1-8-0 at which it is now fixed." (G. R. 6050 of 5th November 1890, Jud. Dep.)

The property of a deceased intestate dying within municipal limits is by Regulation VIII of 1827, *held* by the District Judge, and eventually transferred to the High Court and the proceeds, less all expenses incurred; deposited in the public treasury for the eventual benefit of all concerned.

15 **Construction, &c., of public streets:**—See note 12 to sec. 15.

Municipal boundary marks.—See section 4 (3). "Bridges, causeways" are omitted from, and "sewerage works" embodied in, this clause.

Power to straighten, exchange land for, or abandoned a road.—The land in suit once formed part of a municipal lane. The lane was crooked and had a sharp corner which was inconvenient for traffic. The municipality exchanged the land with the plaintiff for other land, and by this means straightened the road. Defendant then seized the land in suit and built upon it. Plaintiff sued to recover possession. *Held*, that defendant had no right to the land; that under the Bengal Municipal Act the municipality had ample power to do as they did, to straighten a road, to exchange land, and to abandon an old road for a new one. I. L. R. 2 Cal. 425 distinguished (*Khalil Rahaman* v. *Dacca District Board*. (1911), 11 Ind. Cas. 28.)

Maintaining public streets.—The duty imposed on District Boards by section 95 of Madras Act. 1884 to construct and maintain roads casts on them by necessary implication the duty of constructing and maintaining the necessary culverts and tunnels under them. This implied power to construct and maintain such culverts and tunnels is not merely permissive, to be exercised only when no injury will be caused to others thereby, but an imperative duty cast on the Board by the Act.

No suit for injunction or damages will lie against the District Board for any injury caused by the construction or improvement of such works, when such works or improvements are necessary in the interests of the public for the maintenance of the road, and there is no negligence in the carrying out of the work. (*Aiyasami Aiyar* v. *The District Board, Tajore* I. L. R. (1908) 31 Mad. 117.)

16 **Water supply.**—See section 52, proviso, as to expenditure on water-works outside municipal limits.

By section 48 (*k*), the municipality may make by-laws for regulating the water-supply.

Madras Act IV of 1884 contains in sections 143 to 156 elaborate provisions as to water-supply.

The Government of India would be glad to see greater attention paid by Municipal Committees to the provision of pure drinking water, and the advantages of such a provision should be permanently brought to the notice of all local bodies interested in sanitation and entrusted with the charge of public funds. (G. R. 2939 of 24th Sep. 1887, Gen. Dep.)

"It has repeatedly and publicly been enunciated that the supply of water is a local matter. The only consistent course is to insist on local resources finding the means, and to aid municipal or Local Boards as the case may be, by the advance of loans." (G. R. 4439 of 19 Dec. 1891.)

Water-supply and drainage.—For further orders on these subjects see Part II Appendix N. A Town planning scheme may make provision for these matters. See the Bombay Town Planning Act, 1915. See also notes to sec. 30 Cumming's Local Board Manual.

As to the policy of Government in respect of water-supply, see para 18 of the Resolution printed in the Preface to this edition.

Water-supply by Municipality to Cantonment.—See G. R. 5385 of 19 July 1914, G. D. as to terms on which it was agreed that the Karachi Municipality should supply water to the Cantonment of that station.

17 **Registration of births and deaths.**—See section 48 (1) (*f*) which provides that a municipality may make by-laws for the registration of births, deaths, and marriages, within the Municipal District.

See sec. 56 (*e*), under which a municipality may grant rewards for information which may tend to secure the correct registration of vital statistics.

Municipalities have generally adopted by-laws rendering it compulsory to give information regarding both births and deaths, but they are usually a dead letter and in most cases, the returns are grossly incorrect. It is obviously useless to frame by-laws, if no attempt is made to enforce them. It should be impressed on all municipalities that this is not a matter in which partial improvement is of much advantage. Until the statistics can be relied upon as approximately accurate, no inferences can be drawn from them regarding the effect of municipal administration. If therefore the measures adopted are not effective, any expenditure which may be incurred and any trouble which may be taken are lost. (G. R. 1167 of 30th March 1885, Gen. Dep.)

See the Births, Deaths, and Marriages Registration Act, 1886, Act VI of 1886; and rules thereunder, published from time to time by Government.

In January 1909 the Secretary of State asked that the question of making the registration of births and deaths in India compulsory might be re-considered, with the object of securing a more complete and efficient system of registration, especially among Europeans and possibly among other classes of the community (*vide* G. R. 2368 of 6 May 1909, G. D.)

The Government of India came to the conclusion that it was unnecessary to insist on compulsory registration in cases in which it is not required by municipal and local laws. Government action should for the present be restricted to making more generally known the advantages of Act VI of 1886, which has remained practically a dead letter, mainly on account of ignorance of its provisions and utility, and partly because people are content to rely, in the case of births and deaths, on the ecclesiastical returns; to improving the system of registration under municipal and local laws; and to facilitating recourse to registration under the Act of 1886 by persons living in outlying district.

It was suggested that attention should be called publicly to the advantages of registration under Act VI of 1886 and that it should be arranged that in all areas where registration was compulsory under municipal or local laws, but in which only the fact of a birth or death is recorded, so that the registration is of statistical value only, details are recorded such as (in the case of a birth) the names of the parents, their status, the date and place of birth and the sex of the child.

G. R. 1522 of 13 March 1911, G. D. directed that municipalities should give effect to these orders.

Commissioners should impress upon all municipalities the special importance of making the system of registration more efficient and trustworthy ; and that the provisions of the new Act which legalise the grant of rewards and enforcing the supply of information for that purpose will not be allowed to remain a dead letter. (G. R. No. 2472 of 1st May 1901, Gen. Dep.)

Commissioners and Collectors should take every opportunity of inducing municipalities to make a proper use of the powers given them for the purpose of securing correct registration.

2. If in the opinion of the Commissioner, a municipality does not maintain sufficient establishment, or otherwise make proper arrangements, with due regard to its financial resources, for performing the duty imposed upon it in this respect, the Commissioner should, after due warning, and if he finds that no reasonable improvement is effected, move Government to take action under section 42 (now 178).

3. The policy of granting small rewards out of municipal funds to persons who give information of cases in which the requirements of the by-laws on this subject have not been fulfilled may well be tried in some places and Government approve of the proposal to instruct the village officers in small municipal towns to co-operate with the municipal authorities in securing prompt and accurate registration ; but it must be understood that this co-operation will not relieve the municipality of the responsibility imposed on it by law. (G. R. No. 408 of 21st Jan. 1898).

In G. R. 2472 of 1st May 1901 Government desired to impress on all municipal authorities the immense importance of making the system of registration of births and deaths more efficient and trustworthy and that the provisions of the Municipal Act, which legalized the grant of rewards and enabled municipalities to enforce the supply of the information necessary for the purpose, would not be allowed to remain a dead letter.

Vital statistics improvement of.—G. R. 5031 of 31st July 1912, G. D., publishes some proposals on this matter and directs that all municipal bodies should be required to take the requisite steps for the strict enforcement of the by-laws for registration of births and deaths. Collectors and Deputy Commissioners should, in their annual reports on municipal administration, notice the measures adopted by municipalities in compliance with these instructions and their results.

G. R. 7097 of 23rd October 1912 called for a report on the suggestion that medical men of the grade of sub-assistant surgeon should be appointed in municipalities as registering officers for vital statistics.

G. R. 9897 of 5th Dec. 1912 publishes the reports of the various Commissioners and directs that the scheme should be introduced at Ahmedabad tentatively for a period of 3 years commencing from an early date. Sanction was given to the appointment of 6 sub-assistant surgeons as registrars of vital statistics at Ahmedabad on a salary of Rs. 50+10 per mensem each. They would be under the control of the Medical Officer of Health of the municipality. The charge on this account being met under budget head "24 Medical" on account of grant-in-aid to local bodies for sanitary projects.

With G. R. 1890 of 28th March 1911 was published a draft Bill to amend the Act of 1886. *The Statement of Objects and Reasons says.*—It has been represented to the Government of India that the provisions of the Births, Deaths and Marriages Registration Act, 1886 (VI of 1886), are not as freely resorted to as would otherwise be the case owing to the fact that the personal attendance before the Registrar of a person giving notice of a birth or death is required by section 22 of that Act. It is proposed therefore to amend section 22 so as to allow notice of a birth or death to be given in writing, subject to precautions to secure the identification of the person giving the notice.

2. The Government of India consider that such precautions should be left to rules to be framed by Local Governments, and opportunity has also been taken in making this amendment to delegate to Local Governments the general rule-making power under the Act.

For rules under the Act, see the Bombay Government Gazette of 1912, Part p. 1852 originally published under Govt. Note No. 2600 of 25th July 1888 Bom. G. G. of 26th July 1888, p. 622.

18 **Vaccination**.—See the provisions of the Madras Act, sections 129 to 142.

Bombay Acts I of 1877 and IV of 1879 provide respectively for compulsory vaccination in the City of Bombay and the town of Karachi.

"The Bombay District Vaccination Act, 1892," (Bom. Act No. I of 1892) is an Act to prohibit the practice of Inoculation and to make the Vaccination of children in certain provinces of the Bombay Presidency compulsory.

The Act extends to the whole of the Presidency, except the City of Bombay and town of Karachi, but does not come into force in each local area, except on such day as the Governor in Council by Notification in the *Bombay Government Gazette* directs.

The Act has been declared in force in various municipalities.

Vaccination is now carried out in all municipalities by vaccinators appointed and paid by the Government Sanitary Department, which has entire control over these officers; municipalities merely contribute to the cost of the establishment in their respective limits as per requisition made yearly by the Sanitary Commissioner in advance.

Although the law does not impose on municipal councillors the duty of collecting children together in order that they may be vaccinated when a vaccinator visits the municipalities, considering the great advantages of vaccination and the effect it must have on public health by preventing or checking the spread of small-pox, Government desire that the councillors should be requested through the President, to direct municipal employés to aid, as far as possible, the vaccinators in the performance of their duties by collecting children to be vaccinated. (G. R. 4574 of 24th Dec. 1888, Gen. Dep.)

Under the Act, it is the duty of municipalities to provide for the cost of public vaccination within the areas subject to their control, and it seems very desirable in the interests of the public health that this duty should be enforced. Commissioners of Divisions and in Sind are requested to take such steps as they may deem proper to induce the municipalities which do not contribute at all or contribute only partially to make suitable contributions towards the cost of vaccination within their respective areas. H. E. the Governer in Council trusts that in view of the great importance of public vaccination municipalities will agree to the expenditure of a reasonable proportion of their revenues on this very desirable object. (G. R. 1170 of 22nd March 1889, Gen. Dep.)

It should be distinctly understood that all vaccinators, whether paid from municipal, Local, or Cantonment Fund, are subordinate to the Sanitation Department, and are in an analogous position to Medical officers lent to these bodies. Any representation regarding the vaccinators which any of these bodies may wish to make should be made to the Deputy Sanitary Commissioner of the District, who will endeavour to meet, as far as he can, their requirements, and who will, of course furnish them with any returns or information they may wish to have. (G. R. 3450 of 9th Sept. 1885, Gen. Dep.)

This ruling does not affect the general responsibility of municipalities, which is restricted to making adequate provision for public vaccination within the municipal district. If the Sanitary Commissioner wishes to use the services of a vaccinator, paid exclusively from a Municipal Fund, for public vaccination beyond the limits of the municipal district, he should arrange with the municipality and Local Board concerned for a fair contribution by the latter body towards the pay of the vaccinator. Such arrangement, having been come to, the vaccinator will be, as hitherto, entirely under the orders of the Sanitary Department. (G. R. 1268 of 31st March 1890, Gen. Dep.)

It should be pointed out to all municipalities that as the peons are appointed to assist the vaccinators, the efficiency of their service cannot be secured unless the full control of them is left to the vaccinators and to the department to which the vaccinators are subordinate. (G. R. 4573 of 1st Dec. 1885, Gen. Dep.)

Government keep up a special establishment for the superintendence of vaccination operations, and all vaccination returns, &c., are submitted to the Deputy Sanitary Commissioner.

The cost of administration, superintendence and printing of forms is defrayed from Provincial services.

In future, a vaccinator paid out of Local or municipal Funds, should not be deputed or transferred to a Native State, without the express permission of Government.

All other transfers will be made by the Sanitation Department, whenever the good of the service demands, and it will be sufficient if Deputy Sanitary Commissioners merely report such transfers for the information of the president. (G. R. 2498 of 15th July 1886, and 2910 of 17th August 1886, Gen. Dep.)

Municipal vaccinator liable to do Plague work.—A municipal vaccinator, having disobeyed the Collector's orders, directing him to attend to a Plague case, Government ruled:—

"All Subordinates of the Sanitary Commissioner must understand that they are to be considered available for plague duty, just so far as their services can be spared from their more ordinary work." (G. R. No. 2636 of 9th May 1898, Gen. Dep.)

Vaccination registers to be kept.—As the birth and death registration is in the hands of municipalities, and as they have to make adequate provision for public vaccination, the custody of the vaccination registers should be in their hands also.