"If a municipality registers births, the establishment performing the registration work ought to be able to give very efficient assistance to the vaccinator in his duties." (G. R. No. 4050 of 14th Nov. 1893, Gen. Dep.)

Vaccinators to be no longer Government servants:—By G. of I., Home Dep. (Mun.) No. 190—202 of 27th November 1906, published under G. R 652 of 29th January 1907, Gen. Dep. the Government of India directed (1) that for the future vaccinators shall not be enrolled as servants of Government nor be employed as a provincial establishment; (2) that vaccinators hereafter employed by local bodies shall be wholly under their administrative control, and shall be on the same footing as other local employes; and (3) that existing incumbents shall retain their present rights to pension from Government where such rights exist.

But at the desire of the Government of Bombay the Government of India agreed that the above orders should not extend to the whole of the Presidency at once, but be tried by way of experiements in some selected district in the first instance. G. R. 1863 of 8th April 1909, G. D. accordingly directed to give the new scheme a full trial for the period of one year. The matter appears to be still in this experimental stage in the district selected.

See further on this subject, Part I, Appendix I, p. 207 of Cumming's Local Board Manual.

20 **Hospitals, Dispensaries, &c.**—See the provisions of the Madras Act sections 125 to 128.

Objects of private charity.—The Governor-General in Council is of opinion that it may reasonably be expected that some effort should be made in every locality to rouse practical sympathy and benevolence towards institutions from which the poorer members of the community benefit so much. Municipalities no doubt give liberal contributions; but municipalities have heavy burdens to bear in connection with the furtherance of sanitation which is the root of all preventive medicine, and this important work may be crippled by the diversion of large funds to charities. The Governor-General in Council considers that the idea that local taxation can be diverted to a medical charity, in order to relieve the wealthy from the obligation of aiding charitable medical institutions in their neighbourhood, should be discouraged, and that an attempt should be made to rouse private benevolence more widely. (G. R. 3529 of 6th Oct. 1888, Gen. Dep.)

Names to be given to:—Endowed institutions such as dispensaries, hospital, &c., should not be styled after the name of the town in which they are situated, but invariably after their correct names, *i. e.*, those specified by the donors. (G. R. 662 of 10th Feb. 1890, Gen Dep.)

Civil Hospitals.—It has been decided that the management of Civil Hospital should remain with Government.

Main Hospital at Head Quarters.—With reference to the proposal of the Decentralisation Committee that in cases in which they have not done so already, Government should take over the administration of the main hospital at head quarters of each district, the Government of India decided in letter No. 880 of 1st Aug. 1910 Home Dep. (Med.) not to proceed with the proposal and to leave each Local Govt. to deal with the matter on the system which it finds most satisfactory. (G. R. 4089 of 25 Aug. 1910, G. D.)

Dispensaries.—There are three classes of Dispensaries:—1, Government Dispensaries, which are maintained at the expense of the Provincial service; 2, Endowed Dispensaries; 3, Grant-in-aid Dispensaries, which receive partial aid from the State.

For "Revised Rules for Charitable Dispensaries," see Government Notification No. 5006 of 27th Sept. 1909 (B. G. G. of 30th Sept. 1909, Supt. p. 160.)

Members, &c., not to have free use of.—In some cases an erroneous notion seems to prevail that members of Municipalities, Local Boards and Dispensary Committees are ex-officio entitled to the free use of the dispensaries. This should be corrected. Hospitals and dispensaries, though open to all cases of the community, whether rich or poor, are so far as their gratuitous use is concerned, mainly intended for the poor, as middle class and rich persons can afford to pay the cost of medicines supplied. (G. R. 343 of 31 January 1887, Gen. Dep.)

From 1st January 1889 medicines should not be supplied from the Government Medical Stores to any hospital or dispensaries in the Bombay Presidency which are not in any way aided by Government. (G. R. 2913 of 22nd August 1888, Gen. Dep.

Medical relief.—The following Press Note was published in the Bom. Govt. Gazette of 31 Aug. 1911 Suplt. No. 35:—

"Government are anxious that the benefits of medical relief on modern lines should be more widely spread throughout the Presidency. In recent years a large number of dispensaries and hospitals have been instituted, but there are still large tracts of the country where

facilities for medical relief are very deficient. The position in this respect has recently been surveyed, and the lists appended to this note contain the names of the places where such facilities are specially required. The names have been arranged in the order of relative urgency in each division and in Sind, and the localities for which travelling dispensaries are considered more suitable have been marked accordingly.

"2. According to section 30 (*b*) of the Bombay Local Boards Act, I of 1884, and section 54 (1) (*o*) of the District Municpal Act, III of 1901 the provisions of medical relief within their respective areas is one of the obligatory functions of Local Boards and municipalities. The resources at the disposal of these bodies are not sufficient to secure the rate of progress that should be aimed at. The Governor in Council has therefore decided that, subject to exigencies of public finance, an annual allotment of Rs. 20,000 for initial charges, and of Rs. 10,000 for recurring expenditure should be made in the budget. But even with these sums it will not be possible to supply the urgent demands for an undesirable number of years. Adequate progress can be attained only if the charitable public come forward with liberal donations and endowments to supplement the fund that can be made available by the State and by local bodies. The Governor in Council desires therefore to draw the attention of the wealthy and charitable to this worthy object."

The note then goes on to give a synopsis of the rules published in Govt. Not. No. 5006 of 27 Nov. 1909 so that those interested may learn the conditions upon which State aid is given to charitable dispensaries.

21 **Primary education.**—The words "middle class" have been omitted from this clause.

The Director of Public Instruction in moving for the deletion of these words which stood in the old Act and in the Bill said, that in the first place, the term "middle class" was no term in educational phraseology nor had it any definite meaning. Middle might be called a sub-division of secondary education. If so, as a matter of fact, though the provision existed in section 24 of Bombay Act II of 1884, no attempt was made by Government to impose it on District Municipal Boards, nor was it necessary to do so, for in the vast majority of the towns and cities of the Presidency provision for such middle education, that is to say, education above primary, was being made by Government itself or by missionary or educational societies or by private enterprise. When, in 1885, primary schools which existed in municipal areas were transferred from the different Local boards to Municipal Boards, Government gave a contract grant for the assistance of the Board, but did not include in that contract grant middle schools. It preferred to leave these middle schools as schools outside the contract and confine the contract to primary education. As a matter of fact, from that day Government has aided middle schools by a separate grant to the municipal fund, and it has not included that in the contract grant which is given for the support of primary schools. Therefore, whatever the object of the provisions of the Act of 1884 might have been, it had not been attained so far as regards middle education. Neither have the boards desired that this obligation should be enforced upon them, nor has Government considered it necessary to attempt to enforce it. The burden of primary education has been quite sufficient for the vast majority of the Boards. In the Bombay City Municipal Act of 1888, it was expressly stated, that the municipality should provide for primary equcation, and the word "middle" disappeared altogether. He thought it was not the intention of Government to impose on the smaller boards of the mofussil an obligation they have not ventured to impose on the great and wealthy City of Bombay. This amendment would relieve the Act of a doubtful phraseology and the Boards would be rid of an obligation which they neither desired, which it was not necessary to impose, and which, if imposed, the great majority could not possibly support. The obligation remaining on the Boards will be to make reasonable provision for primary education, which has been declared by a resolution of the Education Commission, accepted by this Government and the Government of India, to be that part of the whole system of public instruction which possesses almost exclusive claims on the local funds set apart for education."

It will be observed that under section 56 (*c*) full discretional powers are given to a municipality to assist any kind of education they think proper. The amendment relieves municipalities of the obligatory duty, not of a discretional one.

22 **Annual Administration Report.**—This follows the existing practice. It is obvious that municipalities should put on record a public statement of their accounts and the manner in which the rate-payers money has been expended.

For Form of Municipal Administration Report, see Part II, Appendix C.

Free Printing in Government Gazette.—The sense in which the term "public bodies" is used in paragraph 1, clause 2, of the Resolution of the Government of India, No. 1801, dated 4th October 1878, may be gathered from the fact that the Asiatic Society is given as an illustration. There can be no question that municipalities and Local Fund Committees are public bodies in the sense in which the term is used. There is no rule or order however that

public bodies are to enjoy the privilege of having advertisements inserted in the *Government Gazette* free of charge. But as Local Fund Committees appear to have hitherto enjoyed the privilege, it should be continued, and also extended to municipalities, if if has not hitherto been enjoyed by them. They should, however, pay as hitherto for other printing work executed specially for them. (G. R. 952 of 20th March 1884, Gen. Dep.)

The Karachi Municipality having claimed, under these orders, to have advertisements published in the *Sind Official Gazette* free of charge, Government agreed with the Commissioner in Sind in thinking that the Karachi Municipality would prefer to be considered in this matter with the Bombay Municipality, which pays for all its advertisements in the *Government Gazette* and not to be reckoned amongst the smaller mofussil municipalities whose very occasional advertisements are admitted gratis. (G. R. 4018 of 13th Sep. 1899, Gen. Dep.)

23 **Police.**—Before 1882 charges for the Police in municipal towns were borne either wholly or in part by municipal bodies. In 1881, however, the Government of India suggested to the Bombay Government that these charges should be borne by Government and in their stead expenditure on education, medical charity, and local public works should be transferred to municipalities. Accordingly from Bom. Act II of 1884 all reference to Police charges was omitted as also from the other Act, Bom. VI of 1873, by an amending section. In lieu of these charges there were imposed by these Acts upon municipalities the obligation of establishing and maintaining middle class and primary school.

It was objected that the provisions of sec. 77 (2) (3) of the District Police Act violated the terms of the said arrangement, but it was pointed out that the charge imposed by the said Police Act was not that charge that Government would bear in any case for Police throughout the district, but certain special extra charges necessary in the case of large towns, such as the cost of building chaukis at cross roads, and such as are not required to the same extent in rural areas. Such accommodation is provided for by large towns in England, and there is no reason, it is said, why large Indian towns should be exempt from a similar charge.

G. R. 3739 of 23 May 1908, G. D. publishes the decision of the Government of India to relief all District Municipalities in the Bombay Presidency of these charges from 1st April 1908. Bombay Act I of 1910 accordingly repealed the words shown in brackets in this clause.

Under the Panjab Act, section 79 (see Chapter VI, sections 79-84), the municipality "shall, unless relieved of this obligation by the Local Government, maintain a sufficient police establishment within municipal limits;" section 80, when the Local Government does relieve a municipality from these charges, Government may make a contract with it to pay a periodical sum in lieu, and under section 72 (1), the payment of these charges is a first charge against the Municipal Fund.

Under the Bombay City Act, section 62, the municipality have to pay to Government (1) such share of the expenses of the Police of the City, as Government fix from time to time, and (2) the necessary contingent expenses, as determined from time to time by Government, incurred by the Police Commissioner in granting licenses under Bom. Act VI of 1863, to public conveyances in the City.

Government pay for water supplied by a municipality to the Armed Police in the municipal district. (G. R. No. 7476 of 21st Nov. 1901, Judl. Dep. G. R. No. 3971 of 12th July 1902, Gen. Dep.)

Police guards.—Municipalities like other large employers of labour, require occasionally police to guard their offices, works, &c.

24 **Special matters.**—The object of making these last 2 clauses under a separate sub-section was to make it clear that the obligatory provision for the objects contemplated therein, are subordinate to the prior satisfaction of the requirements of the preceding sub-sectional clauses.

25 **Dangerous disease.**—See definition s. 3 (6).

"Dangerous" is substituted for "epidemic" in the old Act; and the last sentence "and taking * * * disease" was added.

Section 48 (*h*) provides for the making of by-laws for enforcing the supply of information of dangerous diseases, and carrying out the provisions of sections 144 and 145 giving special powers for prevention of such diseases.

Plague.—The Decentralisation Committee in their report state. "We do not propose to relieve them from plague charges, but where these are heavy the Government should contribute substantially."

Contribution from Local Funds for plague measures in municipalities.—"2 Under section 45 of the Bombay Local Boards Act, 1884, sanction is accorded to the payment in future from Local Funds of such portion of expenditure on plague measures within municipal limits

as the Collector may determine, subject in each case to the approval of the Commissioner of the Division." (G. R. 1392 of 24th March 1899, Gen. Dep.)

Under the Epidemic Diseases Act, 1897 (Act No. III of 1897), which extends to the whole of India, the Government is empowered when any part of India is vested, by or threatened with, an outbreak of any dangerous epidemic disease, to take special measures and proper regulations, "and may determine in what manner and by whom any expenses incurred (including compensation if any), shall be defrayed."

"This clause embodies the view that Government have maintained in regard to plague expenditure in municipal towns, *viz.*, that such expenditure is obligatory on municipalities in the sense that it is primarily the duty, and not merely at the discretion, of the Local Bodies concerned to provide the means for combating epidemics within their areas, but that this obligation is not to be construed as taking precedence of more normal and elementary obligations, or to be imposed without due consideration for the reasonable discharge of the latter. The decision as to what is reasonable can only be arrived at, as hitherto, after a careful inquiry into the circumstances of each particular locality as well, in respect of the standard of administrative services to be regarded as indispensable as of the taxation suitable to the capacity of the inhabitants when compared with that which is levied from other communities whose conditions are not dissimilar. (G. R. 3874 of 8th July 1901, Gen. Dep.)

A temporary Assistant Surgeon having been appointed on plague duty in a municipality G. R. 1386-P. of 18 July 1905, G. D. authorised, as a special case, under article 278-A of the Civil Account Code, the non-recovery from the municipality of the charges on account of salary and T. A.

Plague committee.—It also directed that in future when it is thought that additional Medical Officers are required for dealing with an epidemic of plague in a municipality, the municipality should be asked first what steps they propose to take, and additional Medical Officers should be appointed and their cost charged to the municipality under the Epidemic Diseases Act only if these steps are clearly inadequate.

Financial aid from Government for plague measures.—The Bombay Government having by G. R. 1886 of 1st June 1905, F. D. addressed the Government of India in regard to the granting of financial aid to municipalities impoverished by expenditure on plague measures, that Government laid down the following instructions which are embodied in G. R. 2544 of 31 July 1905 Fin. Dep :—

The Government of Bombay may make grants in aid of plague expenditure to local bodies, if such be required, without reference to the Supreme Government. In giving such assistance, as a general rule of practice, following principles should be observed, though the Local Government may use their discretion as to departing from them in special cases.

The general principles which the Government of India have accepted in respect of grants in aid to local bodies for the execution of sanitary and other projects undertaken for the benefit of the inhabitants of local areas are those published under G. R. 5090 of 17 Sep. 1902, G. D. and are briefly as follows :—

(*a*) that the entire cost of such undertakings should, as a general rule, be borne by the rate-payers who benefit thereby ; and that, in settling the terms of provincial settlements, expenditure in aid of such works will always be excluded from the standard figures ;

(*b*) that the assistance of Government, when required, should usually be given in the form of loans ; and

(*c*) that, where the cost is too heavy to be borne wholly by the local body and the work is nevertheless too important and useful to be postponed, a grant in aid of a portion of the cost may be given by the Local Government from its accumulated surplus, if it has such a surplus.

"It follows from these principles that the Government of India regard grants made with the object of restoring the financial position of a local body whose resources have been depleted by expenditure on plague preventive measures as generally open to objection. In their opinion it is inequitable to throw upon the tax-payers at large the burden of meeting expenditure on local objects save in very exceptional cases, and ordinary measures of plague prevention cannot as a rule be legitimately included in this category.

"3. While, however, these principles should be generally kept in view, the Government of India have no objection to grants being made by Local Governments in special cases, including those in which the local body is already indebted to Government, and the grant is consequently equivalent to a remission of the principal of the existing loan. In such cases the Local Government should, however, first satisfy itself by careful inquiry that the financial embarrassment of the local body is due to misfortunes beyond its control and not to extravagance or mismanagements of its affairs.

"4. It will be convenient to recapitulate here the principles which the Government of India have from time to time laid down with regard to the incidence of plague expenditure—

(i) It was affirmed in paragraph 3 of their letter No. 5551-A., of 29 Dec. 1897, (*vide* G. R. 402, of 29 Jan. 1898, p. 207,) that the cost of measures taken with reference to a municipal area for the medical relief of plague patients or for the prevention of the spread of the disease, or for the purposes of sanitation, cleansing, or disinfection cannot be thrown upon the State, on the ground that extra municipal areas and residents have directly or indirectly received benefit from such measures by being saved from infection. A municipal body (it was said) owes it to its neighbours to prevent the spread of infection from itself to them, and cannot expect them to meet the cost of carrying out this duty, merely because they benefit by its not being neglected.

(ii) At the same time the Government of India recognized that, in some cases at any rate, the finances of local bodies had been affected by plague to an extent beyond that which they could properly bear, and that to require them to accept the whole of the local class of expenditure incurred within their respective areas would be to impair their general usefulness for their proper purposes. They accordingly stated (*vide* G. R. 4770 of 15 Oct. 1898, p. 263) that in the case of local bodies which had been obliged to take an active part in combating plague, they were prepared to consider the claims of such bodies for a contribution from Government towards the expenditure which might in strictness be charged against them. It was suggested that such cases should be examined with reference especially to the following points:—

(1) the actual cash balance of the local body concerned;

(2) the extent to which it had made efforts, by economies in other directions, to meet the expenditure forced on it by the plague;

(3) its general capacity for meeting the burden by taxation; and

(4) the extent to which it had been stricken.

"6. The Government of India consider that the *ex post facto* conversion of a loan into a grant is a dangerous and undesirable form of aid which should not ordinarily be adopted. But here also they realize that special cases may call for special treatment, and they leave it to the Local Government, subject to the remarks in paragraph 3 above, to use their discretion as to making exceptions to the general principle."

Measures for the prevention of plague.—See G. R. 150-P of 30 January 1906, G. D. (*P.*) publishing (B. G. G. of 25 January 1906, Pt. I.) Govt. of India Res. No. 79—95, Home Dep. (San.-Plague) of 17 January 1906 placing on record in a concise form the results of the practical experience which had been acquired in the 5 years (1900-1905) of actual plague administration, and indicating the preventive measures which appeared most likely to be successful in the future.

Plague expenditure to be a loan, not an advance.—G. R. 446 of 31 January 1906, F. D., approves of the Accountant-General's proposal to treat all advances hitherto made by Government to local bodies for plague expenditure as loans and not as advances.

Scheme for facilitating plague inoculation.—See accompaniment to G. R. 1027-P of 19 July 1906, G. D. (P.).

Cholera.—Cholera epidemic, Government share of expenses.—G. R. 2098 of 19th April 1900, Gen. Dep., discusses at length the apportionment between Government and the Karachi Municipality of the expenditure incurred on account of an outbreak of cholera at Karachi.

"Under ordinary conditions the responsibility of the municipality for the cost of measures to check an epidemic of cholera cannot be questioned.

"The abnormal circumstances attending this epidemic were the influx of a large number of half-famished persons prone to disease, escaping from starvation in their own country, and the recurrence of plague in Karachi, which both reduced the ordinary demand for labour, and so intensified the difficulties of even the resident population of the same class in supporting themselves, and which also necessitated the removal of all this population away from pure water-supply the municipality has provided in the town. The very low bodily condition to which the whole Mekrani population was brought rendered necessary the special measures of relief on the outbreak of the epidemic and these account for one-half the total cost. This too was probably the cause of the very rapid spread of the epidemic, which occasioned the large expenditure on water supply, hutting, etc, in addition to relief in food. The outbreak can in no way be attributed to anything the municipality left undone or any measure imperfectly carried out. Government approve of the distribution of the expenditure in question between Government and the Karachi Municipality on the lines indicated. The salaries and allowances of the Medical Officers employed on cholera duty, should however, be borne by the municipality and no pension contribution on their account will be recoverable from that body.

"3. In similar circumstances in future charges due to plague exigencies should be kept distinct from other charges as far as possible."

26 **Famine.**—This, with the exception of the last 12 words which are new, is clause (19) of section 24 of the old Act, somewhat differently worded, and the matter has now been removed from one of the discretional duties to one of the obligatory ones, in accordance with the express wishes of the Government of India.

The clause, with the exception referred to, corresponds exactly with the Panjab Act, section 72 (*f*), where, however, it is placed among the secondary duties of a municipality, and there the relief may, with the sanction of the Commissioner, extend outside of the limits of the municipality.

Neither the Madras nor Bengal Acts make provision for expenditure on famine.

See section 2 of the Local Authorities (Emergency) Loans Act, 1897 (see Part III of the former edition of this Manual) Clause (2) of that section was especially inserted at the instance of a member of the Imperial Legislative Council on behalf of Bengal, where the District Municipal Act does not permit the municipal fund being applied to the relief of famine.

Doubtless it is not to be supposed that municipalities can adequately deal with famines, but it is equally certain that it is their primary duty to give relief to their poor, and all that the law now requires is that, so far as they reasonably can, and after making provision for the objects contemplated in the preceding clauses, they should do that in the first place and doubtless Government would come to their aid afterwards, on exactly the same principles that the Provincial Government has to devote the Provincial Funds for famine relief and when these funds can go no futher then the Government of India takes over the responsibility. Some municipalities doubtless could not do anything for famine relief and they would not be expected to do anything, but it is right that such as have the means should give relief to the famine-stricken within their limits.

It was contended that the provision should be limited to persons *ordinarily* residing within the municipal limits : that it was a matter of ordinary experience that private charities in cities were generally more attractive than the provision made on relief works outside the municipal limits, and beggars therefore often run away for relief works to get into towns in order to beg at will and live on private charity. This, it was urged, would be too great a burden to put on municipalities especially in times of famine or scarcity. On the other hand it was contended that it was impossible at such a time to distinguish between persons who were always resident within the limits and those who came merely for a few days, nor was it possible to provide words to meet the cases. Municipalities would therefore trust to Government placing a reasonable interpretetion on these provisions.

The last 12 words were added to the clause to make it clear how far municipal responsibility extended.

Grant to a grain shop.—In a time of scarcity and consequent distress the Municipality of Yeola wanted to aid a local committee which had opened a shop named the 'Mubarani Victoria Grain Shop,' to supply grain to the people at cost price, by advancing from municipal funds a sum not exceeding Rs. 1,00,000, without interest. G. R. 79 of 6th January 1897, Gen. Dep., *held* "It would be neither legal nor desirable for the municipality to advance money in aid of the grain shop, which is intended apparently to be a private institution and in no way under the control or management of the municipality. Such a measure would be likely to deter private traders from importing grain and, by restricting competition, might do more harm than good. If the municipality has money to spare, it may well consider whether it can spend it on useful relief works or devote it to providing labour in their own craft for the weavers." (G. R. 130 of 9th January 1897, G. D.)

Grant for famine relief works.—Sanction of Government was not necessary to such a grant made under sec. 24 (17) of the Act of 1873 as amended by s. 49 (*c*) of the Act of 1884. (G. R. 79 of 6th January 1897, G. D.)

55. Every municipality shall also, out of the municipal property and fund, make payments at such rates as the Governor in Council from time to time by general or special orders prescribes, for the maintenance and treatment either in the municipal district or at any asylum, hospital or house, whether within or without such district, which the Governor in Council declares by notification to be suitable for such purpose,

[1]Provision for lunatics and lepers.

[2](*a*) of lunatics, not being persons for whose confinement an order under Chapter XXXIV of the Code of Criminal Procedure, 1898, is in force, and

[3](*b*) of lepers,

habitually resident within, or under any enactment for the time being in force removed from, such district:

provided that in any case in which under any law for the time being in force the charges of the lodging, maintenance, clothing, medicine and care of any such lunatic or leper are recoverable, or have been recovered, from any estate applicable to his maintenance or from any person legally bound to maintain him, the municipality may apply to any Magistrate empowered under such law to take action for the recovery of such charges, and such Magistrate shall thereupon take such action, if he has not already taken it, and shall, out of any sums recovered under such law, cause to be paid to the credit of the municipality the amount of any payments made by the municipality in respect of that person under this section.

1 **Lunatics.**—In England, lunatic asylums are paid for out of local rates, and it must be to the advantage of a municipality to be able to contribute out of its fund to a central institution instead of having to provide one for itself.

Under the Panjab Municipal Act, section 72 (1) (*c*), it is one of the first charges on a municipal fund "to pay such sum as may be required for the expenses of pauper lunatics sent to public asylum from the municipality, and as ought, in the opinion of the Local Government, to be paid by the committee."

Under the same section, clause (2) (*d*), "the payment in whole, or in part of the charges, and expenses incidental to leper asylums within the municipality, and with the sanction of the Commissioner outside it, is a secondary charge against the municipal fund."

In the Panjab, "it appears to be generally admitted that, as a rule, the cost of lunatics, other than criminal lunatics, detained in Government Asylums is a fair charge, in the first instance, against the district or municipality to which the lunatic belongs,—the District or Municipal Committee being left wherever practicable, to recover the amount from the relatives of the lunatic responsible for his maintenance. Accordingly from the 1st April next the necessary payments for this purpose from the funds of Municipal Committees in the hands of Government will be credited to the Provincial Fund—unless the Municipal Committee is exempted specially or generally by order of the Local Government from payment of the charge." (Panjab Fin. Dep., Cir. No. 36—1595, dated 17th August 1875.)

The cost of maintaining non-criminal lunatics while detained under observation should be met from Provincial and not municipal revenue. (Panjab Gov. Letter No. 239, 30th Jan. 1891.)

In G. R. 4091 of 18th May 1915, G. D.—Government concur in the view that under section 55, it is one of the obligatory duties of municipalities to bear the charges in respect of the maintenance and treatment of poor lunatics coming from the respective municipal areas. The Governor in Council is accordingly pleased to direct that henceforth municipalities should pay the cost of maintaining such lunatics at lunatic asylums at the following rates:—

	Rs.	A.	P.	
For Europeans, First Class	4	0	0	per diem.
For „ Second Class	2	0	0	„
For „ Third Class	1	0	0	„
For Indians, First Class	2	0	0	„
For „ Second Class	1	0	0	„
For „ Third Class	0	8	0	„
For „ Fourth Class	0	4	0	„

For Europeans and Anglo-Indians the asylum is that at Yerrowda, Poona; for Indians it is the Cowasji Jehangir Lunatic Asylum, Gidu, Hyderabad-Sind.

See "The Lunacy (Supreme Courts) Act, 1858" an Act (34 of 1858) to regulate proceedings regarding questions of alleged lunacy and making provision for the estates of lunatics.

Also "The Lunacy (District Courts) Act, 1858," an Act (No. 35 of 1858) to make better provision for the care of estates of Lunatics not referred to in the previous Act.

Also "the Indian Lunatic Asylums Act, 1858," an Act No. 36 of 1858, for the establishment of asylums for the reception and detention of lunatics. Government may grant licenses to any private persons for establishment of such asylums.

2 **Lunatics under Criminal Code.**—That is under section 466 of Act V of 1898 accused persons found to be of unsound mind and incapable of making a defence, or under sec. 471 persons found to have committed an act which but for the unsoundness of mind should be an offence.

3 **Lepers.**—See "The Lepers Act, 1898," an Act (No. 3 of 1898) for the segregation and medical treatment of pauper lepers, and the control of lepers following certain callings.

This Act extends to the whole of British India, but has not yet been brought into force in the Bombay Presidency except as stated below.

A Press Note issued under Government No. 962 of 12th February 1912, G. D. (B. G. G. of 29th February 1912, Pt. I, p. 259) gives a statement of the measures which had been adopted for the compulsory segregation and confinment of lepers under the Act, which had been applied to the Town of Bombay and to the City of Poona where leper asylums had been erected *viz*: The Acworth Asylum at Matunga and one at Khundhwa Budruk on behalf of the Mission for the Lepers in India and the East. At Belgaum the property known as "Rehoboth" had also been acquired by Government for an Asylum. The question of extending the Act to other parts of the Presidency was under consideration.

There is also a Leper Asylum at Mangha Pir in the vicinity of Karachi.

[1]Discretionary powers of expenditure of municipalities.

56. Municipalities may, at their discretion, provide out of the said property and fund, either wholly or partly, for

[2](*a*) laying out, whether in areas previously built upon or not, new public streets, and acquiring the land for that purpose, including the land requisite for the construction of buildings or curtilages thereof, to abut on such streets;

[3](*b*) constructing, establishing or maintaining public parks, gardens, libraries, museums, lunatic asylums, halls, offices, dharamsallas, rest-houses and other public buildings;

[4](*c*) furthering educational objects others than those set forth in sub-clause (*p*) of section 54;

[5](*d*) planting and maintaining roadside and other trees;

[6](*e*) taking a census; and granting [7]rewards for information which may tend to secure the correct registration of vital statistics;

[8](*f*) making a survey;

[9](*g*) the salaries and allowances, rent and other charges incidental to the maintenance of the Court of any stipendiary or Honorary Magistrate, or any portion of any such charges;

[10](*h*) arrangements for the destruction or the detention and preservation of such dogs within the municipal district as may be dealt with under section 49 of the Bombay District Police Act, 1890;

[11](*i*) securing or assisting to secure suitable places for the carrying on of the offensive trades mentioned in sub-section (1) of section 151;

[12](*j*) supplying, constructing and maintaining, in accordance with a general system approved by the Sanitary Board, receptacles, fittings, pipes and other appliances whatsoever, on or for the use of private premises, for receiving and conducting the sewage thereof into sewers under the control of the municipality;

[13](*k*) establishing and maintaining a farm or factory for the disposal of sewage;

[14](*l*) any other measure not specified in section 54, likely to promote the public safety, health, convenience or education; and

[15](*m*) with the previous concurrence [in the case of City Municipalities, of the Commissioner, or in other cases] of the Collector, any public reception, ceremony, entertainment or exhibition within the municipal district.

1. **Origin of section.**—This is taken from part of sec. 24 of the old Act, Bom. VI of 1873, with some important additions. Compare with section 30 Local Boards Act, (*Vide* Cumming's Local Boards Manual.)

2. **New public streets.**—Under the Town Planning Act, provision may be made for a scheme for this purpose.

Sec. 48 (1) (*c*) provides for by-laws for the proper provision of the laying out of streets, and sections 90 and 91 set out the powers of a municipality in respect of streets.

3 **Public Works and Buildings.**—This clause is much the same as clause (16) of the old Act, except that the words "constructing, establishing" have been substituted for "erecting" and the words "colleges, schools other than middle class or primary schools" have been omitted; provision for such objects being made in the next clause.

The Panjab Act includes "poor houses, encamping grounds, pounds, and other works of public utility."

The Madras Act includes "poor houses, recreation grounds, reading rooms, gymnasia, or any other institution connected with the diffusion of education."

The Town Planning Act provides for a scheme for the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and public purposes of all kinds.

Public parks and gardens.—See G. R. 10276 of 18 Dec. 1905 directing the grant by Government to the Karachi Municipality of certain open spaces to be set apart as public recreation grounds under sec. 38 of the Land Revenue Code subject to the conditions specified.

Libraries.—See G. R. 2037 of 14 October 1909, Educ. Dep. giving the rules for th conduct of public libraries which on being registered would be entitled to certain aid from Government. These rules have been slightly altered by G. R. 311 of 1 Feb. 1912.

G. R. 3327 of 11 Dec. 1911 Educ. Dep. set out general instructions in regard to the registration of vernacular libraries and the official support that may suitably be accorded to them when registered.

G. R. 4163 of 11 Aug. 1900, Gen. Dep., sanctioned a grant by a municipality of a monthly contribution to a Reading and Recreation Room, which was open to the public without distinction of races, religion or caste. It was pointed out that the grant could only be renewed from year to year under a duly sanctioned budget and that there could be no guarantee of permanency in regard to contributions from local board funds. See also G. R. 1476 of 15 April 1900.

Government refused to sanction a grant from Local Boards towards the Native Public Library in Karachi, not on the ground of its being within municipal limits, but on general grounds. (G. R. 3386 of 23 May and 5571 of 17 Aug. 1888, Rev. Dep; 1717 of 2 March 1889, Rev. Dep.)

G. R. 8631 of 24 Dec. 1888, Rev. Dep. sanctioned a grant from Local Boards towards the Municipal Library and Museum at Karachi as this was an object of educational utility throughout the province of Sind.

Lunatic asylums.—See section 55 and notes.

Dharamsauas.—The following orders apply also to municipalities:—

Land is granted free for dharamsallas near Railway Stations, if the dharamsalla is to remain in the charge of the Local Fund Committee. (G. R. 4075 of 3rd Nov. 1867.)

Fees are not to be charged to natives for the use of dharamsallas, and they should not be repaired out of the proceeds of tolls, but should remain as heretofor Local Fund Buildings. (G. R. 268 A-1664 of 9th July 1873.)

Dharamsallas are usually not the property of Government, and therefore Government are unable to issue any general order as to their occupation for lengthening periods by recruiting parties, but Collectors should be addressed by the officers in charge of such parties as regards the conditions on which any particular dharamsallas that the parties may desire to use can be occupied by them.

Collectors will be instructed to endeavour to arrange to give any reasonable facilities to such parties as regards such occupation. (G. R. 926 of 14th Feb. 1901, Gen. Dep.)

A municipality may however charge fees for the use of their own dharamsallas. See note 3 section 51.

Public buildings.—See note 3 sec. 50 and note 7 sec. 54, also the Compilation of Standing Orders of Government in the Revenue Department.

Travellers' and Staging Bangalows.—See Cumming's Local Board Manual page 54.

4 **Educational objects.**—Municipalities will thus be enabled to assist technical schools, give grants to colleges, provide scholarships in an Institute for Research or in any way to further educational advancement or progress that they might consider to be desirable for the benefit of the municipal district. Also grant scholarships to students for medical training.

5 **Road side trees.**—See compilation of Standing Orders referred to note 3 *supra*, page 1955; also Cumming's Local Board Manual page 57.

6 **Census.**—By section 48 (1) (*f*), a municipality may make by-laws for the taking of a census within the municipal district, and for enforcing the supply of such information as may be necessary to make such census effective.

7 **Rewards for vital statistics.**—This provision for granting rewards for vital statistics had been added in order to legalise the practice existing in some municipalities.

The words "and any lawful sanitary measure" in the old Act have been omitted.

See sec. 48 (1) (*f*) for the registration of births, deaths and marriages, within the municipal district and for enforcing the supply of such information as may be necessary to make such registration effective. By sec. 54 (1) (*f*) this registration of births and deaths is an obligatory municipal duty.

8 **City Surveys.**—See Part II, Appendix J.

9 **Magistrate's Courts.**—The Hon'ble mover of the Bill stated that by this clause it was not intended that any municipality should pay for Magistrates; Government appoints and pays them, but this provision enables a municipality to pay the expenses incidental to the establishment, &c., connected with the office. In many municipalities the time of the stipendiary Magistrate is taken up a great deal in trying municipal cases, and as the proceeds of the fines go to the municipality, there is no reason why the municipality should not contribute to the charges connected with the office. In the larger municipalities, Honorary Magistrates have to be appointed to do chiefly or solely the municipal judicial work.

The fairest way to divide between Government and a municipality the cost of an establishment for Honorary Magistrates and Benches of Magistrates who deal with municipal as well as Indian Penal Code and other cases is to distribute the charges rateably to the work done which can easily be calculated with sufficient accuracy on the annual returns. In calculating the cost of the establishments one-sixth of the sanctioned salary of karkuns and one-sixteenth of the salary of peons should be added on account of their leave allowances and pensions. The municipal share of the charges should be deducted from the amount of the fines creditable to the municipality, and when the latter fall short of the former, the balance should be recovered from the municipality. (G. R. 4618 of 26th Nov. 1907, Fin. Dep.)

10 **Dogs.**—The provisions of this clause are elastic so that where there is a strong prejudice against spending funds for the destruction of dogs, the municipality may pay for feedings such as are detained by the Police under the Police Act.

See the Bombay District Police Act, sec. 49, as to muzzling of dogs, their detention and destruction.

The Panjab Act, sec. 138, authorises the destruction of mad dogs and confinement of any dog suffering or suspected to be suffering from rabies.

The Madras Act, sec. 230, authorises destruction of stray dogs and pigs.

Muzzling of dogs.—The Government of India, finding that there were grave difficulties and objections in the way of enforcing in municipal and rural areas an order for the compulsory muzzling of dogs during the prevalence of rabies decided not to proceed with the proposal so far as municipal and rural areas were concerned." (G. R. 4691 of 5 Sep. 1900, Gen. Dep. with reference to G. R. 5494 of 1 Dec. 1899, Gen. Dep.)

G R. 3739 of 23 May 1908, G. D. directed that though municipalities were to be relieved of police charges, they were still to bear the cost of the destruction, &c., of stray dogs, this being a municipal duty and not a police charge.

11 **Offensive trades.**—The justice of this provision will be readily recognised. If for the benefit of all the rate-payers an offensive manufactory has to be moved, it is only reasonable that the municipality should have the power of assisting the manufacturers to find some suitable place to carry on their useful, but disagreeable occupation. The burden of doing so is however, not made compulsory on the municipality.

12 **Sewage system.**—Sec. 48 (1) (r) provides for by-laws regulating the construction, maintenance &c., of drainage and sewerage works of every description. Sec. 54 (1) (c) makes the cleansing of public streets &c. an obligatory duty. See notes thereto.

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

13 **Sewage farm or factory.**—Such of the municipalities as may be in need of information on the subject of sewage farms may purchase "The 27th Annual Report of the Sanitary Commissioner and the First Report of the Sanitary Engineer to Government of Madras, 1890," of which the report on the sewage farm system in Madras forms an appendix. (G. R. 2050 of 5 June 1894, Gen. Dep.)

Milk-supply, a sanitary measure.—Government are of opinion that adequate schemes for the improvement of milk-supply can legitimately be regarded as schemes connected with the improvement of the sanitary condition of towns, and that as such they are entitled, *pari passu* with other sanitary projects, to Government support from the provision made in budget estimates for grants-in-aid to local bodies for this purpose. For the present no limit will be imposed on the proportion of the cost which will be borne by Government. Such proportion will be determined in each case on a consideration of the merits of the scheme and of the extent of the ability of the municipality concerned to finance it from its own resources.

14 **Public saftey, health, &c.**—This is a roproduction of clause (2) of the old Act, sec. 24 See sec. 52, proviso (*b*).

Female Medical Education.—See G. R. 2826 of 19 Sep. 1887, Gen. Dep., communicating for information of all Municipal and Local Boards letter from the Government of India on the subject of the establishment of stipends and scholarships by the Boards for the promotion of Female Medical Education. The Governor in Council fully sympathises with the movement and trusts that the Local Bodies concerned will readily and cheerfully do all in their power to aid in developing this most useful and beneficial project.

Nurses.—Training of native—See Gov. Res. 1132 of 19 March 1890, Gen. Dep., for full particulars of the scheme for training of Nurses at the Jamshedji Jijibhai Hospital, Bombay, para. 4, of which is as follows:—

"4. A highly qualified teaching staff to instruct the pupil nurses will thus be provided. It remains now for Native States, Municipalities, Local Boards, and private individuals to

furnish the pupils and supply the funds to cover the cost of their maintenance and education, and the Governor in Council trusts, that they will not be backward in availing themselves of the opportunity offered to them for furthering the accomplishment of an excellent and beneficent work. The course of training of the pupil nurses will extend over two years and will be carried on for the present at the Jamshedji Jijibhai and Obstetric hospitals, though hereafter probably it will be desirable to give instruction to pupils in the Motlibhai and Petit hospitals also The total cost of the maintenance and training of each pupil nurse will be Rs. 20 monthly or Rs. 480 for the full period of two years. It will be necessary that the payment on behalf of a pupil sent by a Local Board, Municipality, Native State, or private person should be paid quarterly in advance, and it will of course be understood that when a pupil is sent the intention is to pay her cost for the entire term of two years. The payments may be made into the Government Treasury where they would be credited to the Lady Reay Pupil Nurse Fund, which will be placed at the disposal of the Committee of the Lady Reay Fund, for Nurses as appointed by Government Resolution No. 3364, 20 August 1889. In cases where the resources of a Municipality or Local Board desiring to contribute towards the education of a nurse are insufficient to enable it to bear the whole amount of the cost it might advantageously enter into arrangements with another or other municipalities or local boards and in combination with them provide the needful sum. By making terms with the exhibitioner the donor can secure a prior claim on the services of a nurse whose training has been completed and whose services have not been previously engaged."

Female medical institutions.—There are in this Presidency besides the Countess of Dufferin Fund, being the Bombay Branch of the National Association for supplying Female Medical Aid and instruction to the women of India, the Cama Hospital for Women and children, and various Dufferin Hospitals in Karachi. Hyderabad, and Shikarpur.

Midwives, training of.—There is in Bombay connected with the Cama Hospital, a *Training school for nursing and midwifery* supported by the Defferin Fund, and at Karachi "the Louis Lawrence Institute" founded for (1) attending to maternity cases among the poor (2) the training of midwives and (3) of *dais* and lastly (4) lectures to married women. This Institute is supported by contributions from the Municipality and District Local Board of Karachi and various other Local Boards and contributions.

Veterinary Hospitals —In some provinces a plan has been adopted of employing veterinary assistants under municipalities * * * their salaries being provided for by the municipalities. H. E. the Governor-General in Council considers this system has many advantages, but it should not be allowed to preclude the provincial veterinary officer from inspecting and reporting on the work of subordinates so employed. (G. I, No. 26—133 of 4 July 1803 G. R. 5755 of 9 Aug. Aug. 1893.)

See compilation of the Standing Orders of Government, page 745, "Horses, Mules and cattle," Part III, "Veterinary Dispensaries Graduates and Assistance" giving rules as to grants-in aid, and formation of committees consisting of the Collector and representatives of all contributing bodies.

The Decentralisation Committee recommended that—municipalities should be altogether relieved of expenditure in connection with veterinary work. But the Government of Bombay considered their was no good reason for this. The establishment of veterinary dispensaries is in accordance with popular sentiment and municipalities gladly contribute to the establishment and upkeep of veterinary institutions that benefit the inhabitants of municipal areas.

Public convenience, &c., Guarantee of interest on capital for works of communication. Light railway-Tramways.—This subject is fully discussed in note 23 to sec. 30 of the Local Boards Act. See Cummings Mannal p. 62.

As to the Decentralisation Commission's proposals on this subject, see para 20 of the Resolution set out in the Preface to this Manual.

By section 45 of the Indian Tramways Act, 1886, "the fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the Local Government, to the paymant of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by a local authority under this Act.

"2. The fund shall also be applicable, with the previous sanction of the Local Government, to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-sec. (1)."

This Act is in force throughout the Presidency except the City of Bombay and the town of Karachi which have their seperate Tramways Acts.

15 **Public reception, exhibition &c.**—While on the one hand, provisions is made for a municipality sparing a little money to give a fitting reception to distinguished visitors, on the other hand, by requiring previous sanction to the expenditure, security is taking that the rate-payers money will not be squandered in receptions to mere travelling politicians and the like, funds for whose entertainment should be provided by their admirers.

The Bom. City Act, sec. 63, provides among the discretional duties "(i) preparation and presentation of addresses to persons of distinction."

"And with the previous sanction of Government, the corporation may make—

(l) such contribution as they think fit towards any public ceremony or entertainment in the city."

The Panjab Act, sec. 72 (2) (j), provides for "the holding of fairs and industrial exhibitions" within the municipality, and outside with the sanction of the Commissioner.

"It was held *in re Corporation of Sunderland*, T. S. 1878, that the Corporation could in no case have a right to spend any part of the borough fund in the entertainment of General Grant. In *Attorney General* v. *Mayor of Batley*, 26 L. T. N. S. 392, it was held that the Corporation clearly cannot buy the Mayor a gold chain, such an article being utterly unnecessary.

Horse shows:—See the Compilation referred to supra p. 829. Also notes p. 60 Cumming's Local Board Manual.

Pinjrapole:—G. R. 6979 of 29 Nov. 1911 refused to sanction a municipal grant to such an institution.

16 **Commissioner's sanction.**—The words in brackets were repealed by Bombay Act III of 1915.

Arrangements purporting to be binding permanently or for a term of years.

57. When a municipality have entered into any arrangement, or made any promise, purporting to bind themselves or their successors, for a term of years or for an unlimited period, to continue to any educational or charitable institution a yearly contribution from the municipal property or fund, it shall be lawful for the municipality or their successors, with the sanction in the case of a City Municipality of the Governor in Council, and in the case of any other municipality of the Commissioner, to cancel such arrangement or promise, or to discontinue or to diminish such yearly contribution, provided that they shall have given at least twelve months' notice of their intention so to do to the manager or managers of such institution.

Management of public institutions maintained by municipalities to vest in them.

58. The management, control and administration of every public institution exclusively maintained out of municipal property and funds shall vest in the municipality by which it is maintained:

provided that the extent of the independent authority of any municipalities in respect of public education, and their relations with the Government Educational Department shall, from time to time, be prescribed by the Governor in Council.

This is a reproduction of the last clause of sec. 24 of the old Act Bom. VI of 1873, with the addition of the word "exclusively," as it was not the intention of the legislature that the mere fact of a contribution by a municipality to any institution should give the municipality a right to its sole management and control.

The corresponding section 77 in the Panjab Act omits "exclusively" and applies the proviso not to education but to every public institution as aforesaid.

Rules laid down by Government under Section 24. [*G. R. No.* 2584, *dated 6th December* 1894, *Educ. Dep. and published under Notification No.* 2585.]

In supersession of the rules published by Government Notification No. 129, dated 26th January 1887, and with reference to Government Notification No. 2433, dated 6th November 1893, the following rules made in exercise of the powers conferred under section 24 of the Bombay District Municipal Act, 1873, as amended by section 49 (*e*) of the Bombay District Municipal Act Amended Act, 1884, to prescribe the extent of the independent authority of municipalities in respect of public education, and the relations of municipalities with the Government, Educational Department, are published for general information:—

1. The powers and duties of every municipality in respect of the establishment and maintenance of schools may, subject to the reservations and conditions hereinafter contained, and subject to such alterations as may from time to time be made under the authority of Government on this behalf, be delegated to a Committee, which shall be called "the Schools Committee," and shall be constituted according to the rules made under section 32 of the District Municipal Act Amendment Act (Bombay II of 1884).

2. The principles and system of school management, the course of instruction to be followed, and the rates of salary to be given to the various grades of masters in Municipal Schools, shall be those prescribed by the Educational Department under the authority of Government in the Codes for Vernacular Masters and Training Colleges, and in Chapter I and Schedules of the Grant-in-Aid Code, so far as the same may be applicable: provided that to meet local requirements, with the previous consent of the Director of Public Instruction, the municipality may adopt such modifications as may be found to be necessary or expedient. In case of doubt as to the application of any principle or rule, the decision of the Director of Public Instruction shall be followed, subject to an appeal to Government, whose decision shall be final and conclusive.

3. Municipal schools shall, subject to the proviso in Rule 2, be provided for all castes and classes of the community, and shall be open to inspection and examination at all times by the Government Inspecting Staff. The municipality shall, in each case, make suitable arrangements in communication with the Inspector for the annual examination required by the Educational Department.

4. In the Budget Estimate of every municipality prepared under section 88 of the Bombay District Municipal Act of 1873, as amended by clause (*j*) of section 49 of the Bombay District Municipal Act Amendment Act, 1884, there shall be a separate section for educational income and expenditure. A copy of that section, with full details of both income and expenditure, and of all variations and alterations made from time to time, shall be forwarded to the Educational Inspector as soon as conveniently may be after the general meeting at which such Budget Estimate, variation or alteration is passed. The School Fund shall be kept distinct from the general Municipal Fund and in the annual accounts rendered under sec. 90 of the said Act, there shall also be a separate section under the head Education. A copy of this section shall be forwarded yearly to the Government Educational Inspector of the Division as soon as possible, after the accounts have been audited and passed.

5. In the Budget Estimate and in the annual accounts shall be set forth in separate parts the receipts and expenditure:—

(1) for schools within the contract*;

(2) for schools not within the contract, but maintained or aided from the municipal Fund with or without a Government grant;

(3) for any other educational purpose not included in the above, but coming under section 24, clauses (15), (16) or (21) of Act VI of 1873.

Under the head of 'Receipts' shall be shown separately—

(*a*) balance of School Fund unexpended and carried forward;

(*b*) the Government contract grant;

(*c*) the fee receipts of schools;

(*d*) the sum assigned and paid to the municipality under section 47 of the Bombay District Local Boards Act, 1884, which is to be expended on educational purposes under the second paragraph of that section;

(*e*) any other contribution made by Government or by a Local Board, and any other income received by the municipality for expenditure on or for the benefit of the said schools, or accruing from the said schools;

* The contract grant is a sum of money paid at the discretion of Government for the support of a certain number of primary schools said to be within the contract.

(*f*) the allotment made by the municipality in the year of account from receipts of the Municipal Fund other than receipts under (*a*), (*b*), (*c*), (*d*), and (*e*) for expenditure on or for the benefit of the said schools.

6. The Budget Estimate and annual accounts shall be rendered in such detail as may be set forth in forms prescribed from time to time by the Governor in Council. †

7. In all questions relating to pension, leave, and pay, and acting allowances, the rule from time to time in force for the Government uncovenanted services, shall be applicable to every member of a school establishment, who has been or may be transferred from the Educational Department, and who was permanently employed by that Department on a salary of more than Rs. 10.

In Municipal Schools so long as persons who hold certificates recognised by the Educational Department or who are already in receipt of pensionable salaries under Government are procurable, no persons not so qualified shall be employed on a salary of more than Rs. 10. It shall be incumbent on every municipality engaging a teacher as aforesaid to make provision for his pensionary rights and leave allowances, in accordance with the rules in this behalf from time to time prescribed by Government, and every such teacher shall have the same rights in respect of pension, leave allowances, dismissal and transfer, as if he were an officer lent to the municipality. In filling up places of non-pensionable pay, the municipality shall give the perference to those who have passed an examination qualifying for the Public Service, or who have been useful teachers.

Explanation.—In reference to the obligation as to the employment of certificated persons recited in this rule, it must be understood that all teachers on a salary of more than Rs. 10 whether first employed by the Educational Department in Government and Local Board Schools or whether first employed by the municipalities in their primary and industrial schools are interchangeable. The municipalities must, therefore, limit their choice of new teachers to (1) Teachers who hold certificates issued by a *Training Institution and signed by an Educational Inspector and (2) Teachers who hold a Drawing Master's Certificate from the Jamsetji Jijibhai School of Art or a final certificate for any course taught in the College of Science, the Dayaram Jethmal Sind College, the Jamsetji Jijibhai School of Art, or the Victoria Jubilee Technical Institute.

* A municipality can send candidates to the Government Training Colleges provided (1) the candidates are accepted as properly qualified by the Educational Inspector and the Educational Inspector has room for them and (2) the municipality provides the usual stipends and engages to employ the candidates for five years after passing for a certificate.

8. Subject to Rule 7, the appointment, promotion, punishment, suspension and dismissal of all members of the establishment of Municipal Schools shall rest with the municipality or the Schools Committee to whom such power may be delegated: provided that no officer in receipt of a salary exceeding ten rupees per month shall be dismissed or have his salary permanently reduced or be re-transferred to the Educational Department without the previous sanction of the municipality.

9. In order that the less advanced municipalities may be relieved of responsibilities which they are not yet prepared to bear, any such municipality may apply to the Director of Public Instruction, and on such application the administration of its schools in the matter of appointment, promotion, punishment, suspension and dismissal of all members of the establishments of Municipal Schools may be conducted by the Government, Educational Department.

10. The scale of school fees payable in any Municipal School shall not, without the previous consent of the Director of Public Instruction, be increased above, or reduced below, that existing at the time of the transfer of such school to the municipality. Free-studentships in primary or secondary schools maintained or aided by a municipality shall be distributed according to the rule prescribed in the Vernacular Masters Code, and scholarships paid from Municipal Fund shall be allotted on the same principle. But it shall be allowable to consider all the schools of the same class (primary or secondary) together, and if suitable claimants do not come forward, the allotted places shall remain vacant.

11. As to all Departmental matters other than those referred to in Rule 2 as to which the ruling of the Educational Department is obligatory, every municipality shall give full consideration to the representations of the Educational Department and shall make a written reply within a reasonable time stating its reasons in case it dissents from the views set forth in such representations.

12. With a view to the promotion of private schools and as an aid to the provision of the adequate system of primary instruction which is required by law, every municipality shall keep a register of primary schools not included in the contract as Municipal Schools, to be recommended by them from time to time for maintenance under the Grant-in-Aid

† See Appendices H and I Part II.

system according to the Code of rules from time to time prescribed and published by Government: provided that a municipality shall not interfere in any way with such schools as do not desire to receive aid or to be subject to its supervision.

13. A detailed statement of all employes in Municipal Schools, with their salaries and all other items of recurring expenditure, shall be maintained by each municipality and shall be at all times open to the inspection of the Government Educational Inspector.

14. Every municipality shall furnish without delay all returns, statistics and any other information relating to Municipal Schools which may be called for by the Educational Inspector.

"The Governor in Council is pleased to direct that proposals for the transfer of Government servants in the Educational Department to municipalities, be well considered and scrutinised by the Educational Inspectors and the Director of Public Instruction before being submitted for the sanction of Government, and that care be taken that the salaries of such officers lent to municipalities are not enhanced unduly in proportion to those of officers holding similar appointments under Government," Educ. Dep., No. 1008, of 27 June 1887, published under No. 2003 of 15 July 1887, Rev. Dep.

The Director of Public Instruction expressed the opinion that.—(1) As regards the question of keeping separate balance accounts, chalans and vouchers the present practice prevailing in all Divisions, was in accordance with the rules and more convenient for the purposes of inspection by the Educational officers and should continue.

(2) As regards the checking of educational accounts by the Audit staff.—The object of scrutiny of the municipal educational accounts by the Educational officers is not merely for account purposes, but for administrative purposes. The Educational officers have to see (1) whether the conditions on which grants-in-aid from Provincial funds are made to the municipalities are duly maintained, (2) whether they have spent on education up to the requirements laid down by Government, (3) whether the expenditure is for primary education only or whether it includes expenditure on secondary or purely religious education, (4) whether the teachers are paid regularly and whether they receive their salaries in accordance with the Code rules, and whether pension contribution has been paid in to the treasury on all pensionable salaries, (5) whether the service books of teachers have been duly filled in and kept up to date and that no unauthorized leave is granted and (6) whether books purchased for libraries, etc., are from the sanctioned list. These and similar points can scarcely be effectively scrutinized by the officers of the Local Audit Department."

G. R. 2698 of 5 April 1913, G. D. approved of these proposals and that these accounts would be subsidiary to the general accounts of the municipalities, *vide* sec. 170.

CHAPTER VII.—MUNICIPAL TAXATION.

(1) *Imposition of taxes.*[1]

Taxes which may be imposed.

59. Subject to any [2]general or special orders which the Governor General in Council may make in this behalf, any municipality

(*a*) after observing the preliminary procedure required by section 60, and

(*b*) with the sanction of the [3]Governor in Council in the case of City Municipalities, and in other cases of the Commissioner, and subject to such modifications or conditions as under section 61 the Governor in Council or the Commisssioner respectively, in according such sanction, deems fit,

may impose, for the purposes of this Act, any of the following taxes: that is to say,

[4](i) a rate on buildings or lands, or both, situate within the municipal district;

[5](ii) a tax on all or any vehicles, boats, or animals used for riding, draught or burden, kept for use within the said district;

[6](iii) a toll on vehicles, and animals used as aforesaid, entering the said district, but not liable to taxation under the clause last preceding;

[7](iv) an octroi on animals or goods, or both, brought within the octroi limits for consumption or use therein;

[8](v) a tax on dogs kept within the said district;

[9](vi) a special sanitary cess upon private latrines, premises or compounds cleansed by municipal agency, after notice given as hereinafter required;

(vii) a general sanitary cess for the construction or maintenance, or both construction and maintenance, of public latrines, and for the removal and disposal of refuse;

[10](viii) a water-rate or water-rates, for water supplied by the municipality, which may be imposed in the form of a rate assessed on buildings and lands, or in any other form, including that of charges for such supply, fixed in such mode or modes as shall be best adapted to the varying circumstances of and class or of any individual case;

(ix) a lighting tax;

(x) a tax on pilgrims resorting periodically to a shrine within the limits of the municipal district;

[11](xi) any other tax to the nature and object of which the approval of the Governor in Council shall have been obtained prior to the selection contemplated in sub-clause (i) of clause (*a*) of section 60:

provided that

[12](*a*) no tax imposed as aforesaid, other than a special sanitary cess or a water-rate, shall, without the express consent of Government, be leviable in respect of any building or part of any building, or of any vehicle, animal or other property, belonging to His Majesty and used solely for public purposes, and not used or intended to be used for [13]purposes of profit, and no toll shall be leviable for the passage of troops or the conveyance of Government stores or of any other Government property, or for the passage of Military or Police Officers on duty, or the passage or conveyance of any person or property in their custody;

[14](*b*) no special sanitary cess shall be leviable in respect of any private latrines, premises or compounds unless and until the municipality have—

(i) made provision for the cleansing thereof by manual labour, or for conducting or receiving the sewage thereof into municipal sewers, and

[15](ii) issued either severally to the persons to be charged, or generally to the [16]inhabitants of the district or part of the district to be charged, with such cess, one month's notice of the intention of the municipality to perform such cleansing and to levy such cess;

[17](*c*) the municipality in lieu of imposing separately any two or more of the taxes described in clauses (i), (vii), (viii), and (ix) may impose a consolidated tax assessed as a rate on buildings or lands, or both, situate within the municipal district.

1 **Imposition of tax.**—This section and the following three under this sub-head now merely put into legal form the various taxes which have been sanctioned by Government from time to time for imposition, and the rules which have been gradually made with the aid of the Law Officers of Government for regulating the procedure of municipalities in regard to the imposition of these taxes.

As to the taxes, tolls and fees which are ordinarily levied by the various municipalities in India, see paras. 11—16 of the Resolution set out in the Preface to this Manual.

As to the power of municipalities to impose taxes, see para. 17, *Ibid.*

See sec. 74 as to when Government may require a municipality to impose taxes.

Retrospective imposition.—Retrospective effect cannot be given to the imposition by a municipality, with the approval of Government, of an enhanced rate of tax under this section.

"It is a general rule that all statutes are to be construed to operate in future, unless, from the language, a retrospective effect be clearly intended. Even a statue which confers a benefit, such as abolishing a tax, would not be construed retrospectively (Maxwell's Interpretation of Statutes, First Edition, 191). Then also, statutes which impose pecuniary burdens are subject to the rule of strict interpretation. It is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language. The subject is not to be taxed, unless the language by which the tax is imposed is perfectly clear and free from doubt (*ib.* 259 and see also *Dullabh Shivlal* v. *Hope et al.*, 8 Bom. H. C. R. 213 A. C. J.) Applying these principles there can be no hesitation in concluding that it would be illegal to impose a municipal tax with retrospective effect." (G. R. 3058 of 2 August 1890, Gen. Dep.)

For suspension, reduction, or abolition of a tax, see sec. 47.

If a municipality seeks to impose a tax, it must have clear and distinct legal authority, and every charge upon the subject must be imposed by clear and unambiguous language. (*Patvari Vithaldas* vs. *Dhandhuka Town Municipality.* 1894 P. J. 444. Following *Dullabh* v. *Hope*, 8. Bom. H. C. R. 213 A. C. J.)

Imposition legal though no advantage accepted.—Where the levy of a water tax was objected to by certain inhabitants on the ground that they did not avail themselves of the privileges of house service, *Held* a Statute is not to be construed like a contract. The power to impose a tax is not contractual, and needs no correlative right.

An equitable construction is not permissible in a taxing statute when it is possible to adhere to the words of the statute." (*Branson* v. *Municipal Commissioners of Madras.* I. L. R. 2 Madras 362.)

Imposition must be clear and unambiguous.—In order to impose a tax rate or toll upon a subject, the framers of the Act or By-law under which such tax, &c., is imposed must use clear and unambiguous words to effect their purpose. When the words used are ambiguous, the intendment of the courts will be in favour of the subject upon whom the tax is sought to be imposed.

Thus where the framers of a by-law imposed a tax of one rupee per maund upon "copper" imported for consumption, it was held that copper wrought up into pots did not fall within the words of the by-law.

Semble that when a tax is imposed upon goods imported into a town for consumption and such goods after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time. (*Dallabh* v. *Hope*. 8 Bom. H. C. R. A. C. J. 213.)

"*Liability of Government under taxing Acts when not expressly mentioned—Prerogatives of the Crown.*—The Superintendent of the Government Gun Carriage Factory in Madras having brought timber belonging to Government into Madras without taking out a license and paying the license fees prescribed by section 341 of the City of Madras Municipal Act, was prosecuted to conviction by the Municipal Commissioners:—*Held*, on revision, that timber brought into Madras by, or on behalf of, Government, is liable to the duty imposed by section 341 of the City of Madras Municipal Act although Government is not named in the section. According to the uniform course of Indian Legislation, statutes imposing duties or taxes bind Government unless the very nature of the duty or tax is such as to be inapplicable to Government. *Per curiam*:—Under the Indian Councils Act, 1861, a Provincial Council has, subject to the same restrictions as those imposed by the Act on the Governor-General's Council, power to affect the perogative of the Crown by legislation. (*Bell* v. *The Municipal Commissioners for the City of Madras*, *I. L. R.* 25 Mad., 457, (1902) 12 Mad. L. R. 208.)

Tax illegally imposed.—If the tax is *ultra vires* of the powers of the municipality, the party concerned may sue for its refund, In such a case the period of limitation within which the suit may be brought is that laid down in Art. 62 of the Indian Limitation Act, *viz.* 3 years from the date the money was recovered by the municipality.

A Municipal Board, in disregard of certain lawful orders of the Govt. of India, levied upon a company trading within municipal limits certain sums by way of octroi duty over and above what they were legally entitled to levy. *Held* on a suit by the company to recover the sums so levied (1) that the suit would lie and (2) that the suit was for money had and received to the use of the defendant within the meaning of Article 62 of the Act.

The special limitation referred to in sec. 167 does not apply in such a case as the imposition is not "anything done or purporting to be done in pursuance of the Act."

Tax legally imposed but refund illegally refused.—In such a case the period of limitation would be that laid down by Article 120 of the Limitation Act *viz.* 6 years from the date when refund was due.

Refund of duty not in the first instance illegally exacted—The plaintiff sued a municipal board for a refund of octroi duty. He did not allege that the duty had in the first instance been taken from him illegally, but that he had after payment thereof become entitled to a refund. Plaintiff did not comply with the rule in the Account Code that when goods are imported in fulfilment of a Government contract, at the time of passing the barrier, there should be a declaration in writing to this effect, and at the same time paying the duty, and subsequently if certified by the departmental officer to have been used by Government, the duty should be refunded. Plaintiff made no such declaration though he said he made the statement verbally.

Held that the suit was governed by article 120 and not by article 2 or article 62 of the Indian Limitation Act, 1938. *Rajputana-Malwa Railway Co-operative Stores* v. *Ajmere Municipal Board*, I. L. R., 32 All., 491. *Guru Das* v. *Ram Narain*, I. L. R., 10 Calc., 860, and *Hanuman* v. *Hanuman*, I. L. R., 19 Calc., 123, referred to. (*The Municipal Board of Gazipur* v. *Deokinandan Prasad*, I. L. R., 36 All. 855.)

2. **Government of India orders.**—See Part II, Appendix K for "*Principles of Taxation.*" See "The Municipal Taxation Act, 1881," under which a municipality is prohibited from levying certain taxes (1) on certain military persons and (2) payable by the Secretary of State for India.

3. **Governor-in-Council.**—This in Sind means the Commissioner in Sind in respect of the taxes specified in clauses (*i*) to (*x*) only. (Sec. 3 (3) note.

4 **Rate on buildings or lands**—*Building*—see definition sec. 3 (7). See proviso (*a*) and note 15 as to exemption of Government buildings.

See sections 63 to 69 as to assessment of buildings &c.

House-tax—on section of a house.—It is not illegal to impose a tax on each section of a house occupied by a separate family as a distinct house; but it is utterly illegal under colour of a rule sanctioning a tax on a *house*, to impose the tax on each section of a house. (Legal Remembrancer quoted in G. R. 4331 of 26 Nov. 1892, Gen Dep.)

"First class" and "Second class" are useless as definitions under houses-tax. The principle of percentage on annual value should be adopted. (G. R. 889 of 7 March 1891, Gen. Dep.)

A drainage tax of 12 annas on houses whose annual letting value is from Re. 1 to Rs 10 is objectionable. Either all such houses should be exempted or at least those whose annual letting value is below Rs 5. (G. R. 1910 of 13 May 1895, Gen. Dep.)

A house-tax or assessment which is a *yearly* tax, is more the less so because for convenience it may be made payable by ½ yearly or other instalments.

A person becoming the owner of a house subsequent to such assessment becomes liable as owner for the whole yearly tax and not only for the instalments that accrue due after his acquisition of ownership. It is not compulsory on the municipality to apportion the tax among the several owners during the period; it may proceed for the years' tax against all or some of them, leaving them to adjust their liabilities *inter see* by appropriate proceedings. The provision of the Transfer of Property Act regarding the obligations of buyer and seller in respect of the payment of taxes do not apply as between the municipality and the subsequent owner. (*The Chairman of the Municipal Council, Nellore* v. *Dwarapally Kotrama*, I. L. R. (1907) 30 Mad. 423; 17 Mad. L. J. 306.)

Agricultural land.—By sec. 63 (3) Madras Act 1884, lands used "solely for agricultural purposes" are exempted from the enhanced rates of taxation that may be imposed in certain cases. *Held* that lands in which potatoes, grain, vegetable, &c., are grown, also land used for pasturage, are lands used "solely for agricultural purposes" within the meaning of the sub-section. Land which is merely lying waste would not come within that meaning. (*King-Emperor* v. *A. Allen*, I. L. R. (1901) 25 M. 627; (1902) 12 Mad. 4 J. Rep. 393.

5. **Vehicles boats or animals.**—*Vehicle.*—See definition section 3 (17).

The Bom. City Act levies the tax at certain maximum rates, with certain exceptions, on all vehicles and animals "kept within the City."

The exceptions are.—(1) any horse exempted under the Municipal Taxation Act, 1881; (2) Vehicles and animals exempted under the Tramways Acts; (3) any horse exempted under the Indian Volunteers Act, 1869; (4) any vehicle or animal certified to be employed for Municipal or Police purposes; (5) vehicles or animals belonging to Government or to the municipality; (6) vehicles kept by *bonâ fide* dealers in vehicles for sale merely, and not used; (7) trucks used exclusively on a wharf, or in or upon any premises appertaining to a factory, workshop, warehouse or railway; (8) handbarrows having one wheel only and children's perambulators; (9) vehicles which during the whole of any quarter is under repair or standing at a carriage-makers; (10) an animal which for the like period has been at an infirmary or is certified by a veterinary surgeon to have been unfit for use for that period.

The Madras Act has (3) and (5); limits (4) to one vehicle and two animals for each person so employed; in (6) includes "animals kept solely for sale by dealers," and adds "vehicles and animals which have not been used during the ½ year." The municipality may also exempt "any vehicle used solely for the conveyance of children."

This tax is in addition to the fees leviable under the Bombay Public Conveyances Act (Bom. VI of 1863) for the regulation and control of public conveyances plying for hire. The provisions of that Act are extended, with certain restrictions, in all places in which the Act itself is extended, to all vehicles kept in readiness for hiring or demand.

The Stage Carriages Act (No. 16 of 1861) extends to the whole of British India, but does not apply to carriages ordinarily plying for hire within the limits of any municipality * * in which any law for the regulation of carriages is for the time being in force.

Section 73 (3) provides for the tax payable by livery stable keepers, &c., being compounded.

Remissions:—May be granted under rules section 46 (*i*).

See the Bombay City Act, sections 182 to 189.

License for new animal:—N, having taken out a license under the Madras Town Improvement Act, 1871, for a bullock, the bullock died, and N bought another, but did not take out a 2nd license. He was convicted of keeping the bullock without a license. (*Municipality of Mannargudi* v. *Nallapa*, I. L. R. 8, Madras 327).

Bicycle—a vehicle with springs:—A bicycle with pneumatic tyres, having 2 metal springs under the saddle is liable to taxation as a vehicle with spring under the Madras City Act, 1884. (*Wilson* v. *Madras Municipality*. I. L. R. 19, Mad. 83).

6 **Tolls on vehicles and animals.**—See the Tolls on Roads and Bridges Act, 1875, Bombay Act III of 1875. Also the Indian Tolls (Army) Act, 1901. (Act No. 2 of 1901.)

Toll.—This is included in the definition of tax, *vide* sec. 3 (14). It is defined by Webster as "a tax paid for some liberty or privilege, particularly for the privilege of passing over a bridge or on a highway, or for that of vending goods in a fair, market or the like."

Tolls levied under this Act are not affected by the Tolls Act so as to require the rates to be fixed by Government or the levy to be under the general control of Government.

See also the Municipal Taxation Act, 1881, for exemptions in respect of animals or vehicles kept or used for military duty.

"The Government of India authorises the Government of Bombay in future to deal with applications by municipalities for levy of tolls on laden carts entering and leaving municipal limits, without obtaining the previous sanction of the Government of India in each case, provided that the tolls imposed are moderate in amount, that they are levied only on laden vehicles (not paying municipal wheel tax) and that the revenue derived therefrom is expended exclusively on the construction and maintenance of municipal roads (including the cost of the necessary establishment for these purposes) or in payment of the interest of capital expended on such roads. (G. R. 1115 of 25 March 1886, Gen. Dep.)

The Bombay Highways Act, 1883, provides for additional funds being raised by a tax on all carriages, coaches, vans, carts, hackeries, horses or ponies within the local area, for the construction and proper maintenance and repair of public roads in or near stations which are chiefly used by the residents for purposes of local convenience, as, for example for inter-communication, pleasure driving or riding, other than for military purposes or for purposes connected with agricultural operations or petty trade, dealing or industry, and *which are not provided for out of Imperial, Municipal, or Cantonment funds.* (See note 12 to sec. 50.)

See the provisions of the Madras Act, sections 91 to 96.

7 **Octroi.**—See Part II, Appendix K as to principles of Octroi taxation and Refunds. Also sec. 75.

"*For consumption or use therein.*"—These words make it now clear that octroi cannot be levied on goods merely passing through the municipal limits, as was ruled *in re Rahimu Bhanji*, I. L. R. 22 Bom., 843.

8 **Dogs.**—G. R. 2761 of 19 Nov. 1870 sanctioned the experiment of a dog tax in Carwar at the rate of Rs. 1½ for each license.

G. R. 2551 of 29 Aug. 1887, Gen. Dep., approved a proposal to introduce this tax into all municipal towns, so as to induce people not to keep dogs to the annoyance and danger of their neighbours.

In most municipalities this tax fails in its primary object as the employes entrusted with the recovery of the tax, find it easy to levy it in respect of good and well bred dogs belonging to respectable residents but the owners of the too numerous pariah dogs that infest most towns to the danger and annoyance of peaceful citizens often escape the tax altogether.

9 **Special Sanitary cess.**—This was the 'Halalcore cess' levied under sec. 57 of the Act of 1873. The inclusion of it among the other taxes disposes of all the knotty questions arising formerly.

"The word 'special cess' suggests that it was intended that the expenses incurred should be rateably recovered in the manner in which in England Local Governing bodies and the Board of Public Health have been frequently authorised to recover the expenses of necessary local improvements, the duty of seeing that the rates were 'equal and proportionate to the means of the contributors' being implied in the grant of the discretionary power of assessment. Even in such case, municipalities could not ignore reasonable complaints as to fairness of incidence. (G. R. 4694 of 29 Nov. 1890, Gen. Dep.)

Maxwell on Interpretation of Statutes, 100, Jones *vs.* Mersey Docks, 35 L. J. M. C., 1.

The levy of the cess may be according to a percentage of the annual letting value of the buildings or lands to be charged, or so much per certain number of occupants of each buildings.

Section 71 (2) provides for a special rate in lieu of this cess for factories, hotels, &c.

Under the Bombay City Act the cess is to be so many per centum, not exceeding three, of the rateable value as will suffice for the special purposes of the tax, subject to a minimum of 4 annas per month for any separate holding or building.

See the Bom. City Act, sec. 142, (1) as to the premises on which this cess is leviable, and (2) provides for the exemption from the cess of any premises in or upon which, in

the opinion of the Municipal Commissioner, no polluted matter, &c. accumulates or is deposited.

See section 69 (1) as to remissions of this cess.

If the conditions of proviso (*b*) are not complied with the levy of the cess is *ultra vires*.

10 **General sanitary cess.**—This cess may be imposed as a consolidated tax, with certain other taxes. See proviso (*c*) to this section.

11 **Water rate.**—Section 71 (1) provides for certain fixed charges and agreements being made in lieu of this water rate.

By the Bombay City Act the rate is to be such as shall be deemed "reasonable with reference to the expense of providing a water-supply."

The Punjab Act, sec. 44, provides that "for the purpose of constructing or maintaining works for the supply of water to the municipality or paying the principal or interest of any loan raised for the construction of such works" the municipality may impose a water tax "upon buildings or lands which are so situated that their occupants can benefit by the works. The rate or amount "may be determined with reference, among other considerations, to their distance from the nearest point at which the water is deliverable by the works and to their level; but in fixing it, regard shall be had to the principle that the total net proceeds of the tax, with estimated income from payments for water supplied from the works under special contracts, should not exceed the amount required for the said purposes."

The Madras Act, sec. 47 (3), provides for "a yearly water and drainage tax on buildings or lands or both; and makes a similar limitation, as sec. 44, Panjab Act, as to the sole purpose of levy of such tax; and sec. 75 provides that if the tax is levied on the annual value of the lands and buildings, it shall not exceed 8 per cent. of such value.

The Bom. City Act, sec. 170, provides that Government and the Port Trust are to be charged for water by measurement; and sec. 171 no charge of any kind is to be made for supply of water at public drinking fountains, &c.

See sec. 69 as to remission of tax and note 9 to that section.

If the water rate is a rate imposed in the form of a rate assessed on buildings and lands, then the provisions of sec. 63 *et seq* must be complied with. The attempt made by the municipality's exponent to draw a distinction between a 'rate on buildings' (sec. 63) and a 'rate imposed in the form of a rate on buildings' is imaginary. (G. R. 4454 of 11 July 1912 G. D.)

The municipality may charge a water rate on a Dhobie's Ghaut.

Water-tax leviable even though municipality do not supply water within the distance provided.—B had a house in a public street and under Madras Act V of 1878 he was entitled to have a stand-pipe accessible at a distance of 150 yards from his house. The nearest pipe was however at a distance of 1,600 yards. He was assessed to the tax, appealed to the appellate authority, who rejected the appeal. *Held* (by 2 Judges against one dissenting Judge that upon the true construction of the Act the right of the municipality to levy the water-tax was independent of the duty imposed to supply water. If the municipality do not provide the water pipes as directed in the Act B's remedy lay in a suit to compel the municipality to provide them. (*Branson* v. *Municipal Commissioner, Madras* (1879) 2 M. 362.)

Waste of water, municipality restrained from stopping supply.—The plaintiff as owner and occupier of a house in Surat, brought a suit against the Surat City Municipality for an injunction restraining the municipality from cutting off the water-supply which had been provided for him under certain rules in force in the year 1898.

The municipality as defendants contended that under the rules which they had made in the year 1905, they were entitled to cut off the water-connection with the plaintiff's house because he allowed the water to run to waste, inasmuch as it was used by the families of the tenants who were not of the family of the plaintiff.

Held, granting the injunction, that under the rules framed by the Surat City Municipality in the year 1905, so long as the plaintiff occupied a house not inhabited by more than three families (rule 7), he was entitled to the water-supply which could be used also by other families in the house not exceeding two so long as they were *bona fide* occupiers of that house.

Held, further, that the application of the words "run to waste" in rule 4, clause (*f*) (3) depended upon the construction of the definition of "domestic purposes" in rule 1 (2) The definition of "domestic purposes" meant nothing more or less than household legitmate purposes. The user for legitimate household purposes by more than one family in the house was not waste within the meaning of the definition. (*The Surat City Municipality* vs. *Tyobji*, I. L. R. (1908) 32 Bom. 460, 10 Bom. L. R. 622.)

Water-rate in respect of a church garden and Soldiers' Institute.—G. R. 21 of 4 Sept. 1906 sanctioned the payment of half the rate levied, the other half being paid by the church fund.

13 **Pilgrim tax.**—See section 92; also para. 16 of the Resolution set out in the Preface to this Manual.

14 **Other taxes.**—See the said Resolution para. 11.

Loom-tax.—G. R. 889 of 7 March 1891, Gen. Dep., refused to sanction a loom-tax, where it was ascertained that the number of loom owners was only $\frac{1}{4}$th of the taxable population of the municipal district.

Professions or Arts.—The Panjab Act, sec. 42, provides for "taxes on persons practising any profession or art, or carrying on any trade or calling." The N. W P. and C. P. Acts make similar provision. The Madras adds "on offices and appointments."

See Bombay Act II of 1871, an Act for imposing duties on certain of the non-agricultural classes in the Bombay Presidency.

Menials and Servants.—The Panjab and Madras Acts allow a tax on menials and servants and the latter Act limits it to Rs. 2 per mensem, and only in hill station municipalities.

Sale of cattle.—The C. P. Act allows "fees on the registration of cattle sold within the municipality."

Drainage tax.—Though the Act contemplates the adoption of a drainage scheme, the omission of such a tax from the list given in this section seems strange unless, indeed, it is included in "a general sanitary cess."

A tax on firms working with machinery would be a legal.

15. **Exemption of Government property &c.**—See the Municipal Taxation Act, 1881.

This follows the principle in England that there should be no rates levied on buildings, the property of Government, so far as they are used only for public purposes. The Hon'ble Sir R. West says "They benefit the municipality, and the principle underlying house-rating ever since the Act of 42 Elizabeth, is that the house affords a means of measuring the occupiers capacity to bear local taxation."

The exception of troops and other Government servants or property is invariably recognised. It must be noted that the first part of this sec. makes the sanction of Government necessary for the imposition of a tax. This proviso refers entirely to its levy and recovery, hence the necessity for the provision as to express sanction.

It was complained that in some municipalities a large revenue was derived from the taxation of Government buildings which were not used for the purpose of profit. Government have now the power to sanction the taxation, but without such express sanction its levy and recovery is illegal.

2. Government do not consider it necessary to issue any general order sanctioning once for all the payment of taxes on such of the Government buildings as it is not desired to exempt. Each case that may arise will be dealt with on its own merits, the "express consent" prescribed by this clause being given only when special and sufficient cause is shown. (G. R. 5070 of 3 Sept. 1901; 248 of 13 Jan. 1902, Gen. Dep.)

This clause gives effect to what has always been the policy of Government, *viz.*, to exempt Government public buildings not used for profit from all municipal taxes other than a special conservancy cess, or a water-rate. (G. R. 2611 of 12 June 1890, Gen. Dep.)

It was, however, represented that as Government buildings and land derived the same benefits from roads, lighting, and other conveniences provided out of municipal funds as did the buildings and lands of private individuals, it was not just to make such exemption, especially in the case of the larger municipalities where such Government buildings formed a considerable portion of the property assessable to the house tax. The clause as it now stands therefore allows some latitude to Government, and on special grounds being made out Government, as in the case of the Karachi Municipality, (*vide* G. R. 4539 of 8 Aug. 1901) is willing to give the 'expresse consent' required.

The municipal Taxation Act, 1881, sec. 3 (*b*), provides for the prohibition of any specified tax payable by the Secretary of State for India, but as will be seen from the notes to that sec., no orders have yet been issued under that clause, the subject being left for the present for treatment under the various municipal enactments.

In 1896, there was introduced into the Legislative Council of the Government of India, a Bill to provide for the exemption from the operation of municipal laws of certain buildings and lands which are the property, or in the occupation of Government and situate within

the limits of a municipality, together with a Statement of Objects and Reasons, but this has not yet passed into law. The Bill was circulated with G. R. 4789 of 28 Oct 1896 and was published in the *Bombay Government Gazette* of October 1896, p. 173.

Exemption of police buildings.—The District Police Act, 1890, sec. 77 (1). "No municipal or other local rates shall be payable by Government on account of the occupation or use of any house or place by members of the police force for the convenient performance of their duties."

Rules for regulating payment of taxes on Government buildings.—The following revised rules for the better regulation of the payment of all municipal property taxes on Government buildings in the Bombay Presidency, including the Mofussil, as well as the presidency town, will have effect from 1 January 1892:—

I. (*a*)—All municipal property taxes, including the general, water and halalkhor taxes on buildings belonging to Government, except Military buildings (for which there are special rules) and those occupied as residences, (*see* Rules III—V below), shall be paid by, and debited to, the Department concerned.

(*b*.)—But in any case in which a lump sum is paid for all Government buildings, as in the Presidency town of Bombay, or for a number of Government buildings in a municipality, it shall, provided the buildings are in the occupation of more than one department of Government, be paid in the Civil Department.

II.—When the lump sum paid in lieu of the general tax on Government buildings includes (as in Bombay) buildings used as residences, for which rent is paid, the* proportionate amount of such shall be paid by the tenant, and shall be exclusive of, and be added to, the house-rent fixed by Government, or other sanctioning authority, (except in cases regulated by Rule III) and shall be recovered from the tenant by a *pro tanto* enhancement of rent.

The other property taxes, *viz.*, water and halalkhor taxes, shall be paid by the tenant direct to the municipality or authorities concerned, except in cases where the actual collection is made by Government Officers under arrangements which the municipality, and in such cases the collection would be made in the same manner as the house-rent, by deduction from salary or otherwise.

III.—In the case of residences occupied by Government Officers in virtue of their appointments, a reduction will be made in the rent for the amount† payable on account of the general tax only. But such reduction should be allowed, or proportionately allowed, only when the rent, *plus* the general tax, amounts to more than 10 per cent. of the salary and local allowances of the occupant.

†*Example.* Pay of Officer, Rs. 1,000.

	Rs.	Rs.	Rs.
Rent ...	...50	97	100
General tax...	5	5	5
	55	102	105
	No reduction.	Reduction, Rs. 2.	Reduction, Rs. 5.

IV.—No reduction on account of general tax should be allowed when public buildings are let to private individuals, or are not occupied, in the terms of the foregoing rule, as official residences.

V.—In the case of buildings occupied partly as an official residence, and partly as a Government office, the tax should be paid by the officer occupying in proportion to the value of the quarters, as compared with that of the office, except as to taxes which are payments for service, such as water-rate and halalkhor cess, &c., which should be charged, when a complete distinction is not possible, on the basis of a fair and not excessive estimate, which should be framed by the Executive Engineer in charge of the building.

VI.—The responsibility for the acceptance of the assessment in the case of public buildings falling under Rules I and V rests with the Executive Engineers in charge, and all such charges should be supported by his certificate, either accepting the assessment, or stating that all legal means have been or are being taken to have excessive assessments reduced; the payment will be arranged by the Department concerned.

Note.—See Circular No. 1642 of 14 Oct. 1901, Gen. Dep.

VII.—No municipal tax is leviable on public buildings situated in a cantonment.

VIII.—These orders will not apply to tenants of Government quarters now in actual occupation, who have been allowed to occupy on any special or implied understanding as regards payment of municipal rates and taxes.

*Note.—In the Presidency town the proportionate amount will be 8/10ths of 8¾ per cent. on the ratable value as given in the Assessor's award of 1891.

IX.—All buildings in the Presidency town of Bombay occupied by Government on behalf of the Police and (for the maintenance charges of which the municipal Corporation of the City of Bombay are liable to pay a proportion fixed by Government) should be reserved for special treatment. (G. R. 318-A—1193 of 27 July 1892, P. W. D.)

These orders appear in the P. W. D., Civil Account Code, under Article 98 (*o*), which embody G. R. 221-A—1379 of 27 Aug. 1885, P. W. D. G. of I., No. 1980 of 16 July 1885, (Fin. and Com.) See also P. W. D. Code, Vol. I. (1900), Chapter X, Article 1054.

When once Government has sanctioned the payment of any tax, though the charge may be a recurring one, no further orders of Government are necessary when the payment is supported by a certificate from the Executive Engineer concerned. (G. R. 2427 of 13 July 1893, Gen. Dep.)

"The sanction of Government should not be held to be necessary for the payment of water and halalkhor taxes as in the case of the house tax; and the ruling contained in G. R. No. 2427 of 13 July 1893, with regard to the house-tax should be extended to the other two taxes mentioned above. Government also consider that where water is charged for by measurement and does not depend in any way on the assessment or valuation of the premises, a certificate from the Executive Engineer is not necessary and that all that is required is the sanction of Government in the Department concerned to the water connection for the building in question being included in the Government water connections. The head of office occupying the building should, however, in such cases certify that he has checked the quantity of water supplied and found it correct.

2. In the same manner when the charge on account of halalkhor tax is founded on service rendered, and not on the value of the property, the head of office in charge of the building concerned has better data than the Executive Engineer on which to base an estimate of the extent of the service, and should be the certifying officer. If it is desired to challenge the fairness of the rate at which the total charge is calculated, the officer concerned should take the opinion of the Executive Engineer. (G. R. No. 2544 of 9 July 1894, Gen. Dep.)

It has recently come to the notice of Government that municipal taxes have sometimes been paid on Government buildings without proper inquiry as to the liability of such building to municipal taxation. The present procedure for the payment of such charges is laid down in G. R. No. 221-A.—1379, P. W. D., of 27 Aug. 1885, and G. R. No. 2427 of 13 July 1893, (Gen. Dep.,) but it has been contended that the duty of the Executive Engineer is limited to certifying that the valuation of the building is fair. It is the duty of the officers of the Department that occupies the building to satisfy themselves that the building is liable to taxation under the municipal rules for the time being in force, before asking for the Executive Engineer's certificate as to the fairness of the assessment. (G. R. No. 3193 of 6 June 1898, Gen. Dep.)

Municipal taxes on Local Board Buildings.—"Government consider that the certificate prescribed by Article 98 (*o*) of the P. W. D., Civil Account Code, should be furnished as regards such of the assessments of Local Board buildings as are levied upon valuation. As to assessments not on valuation, such as generally are for water tax and halalkhor tax, the orders in G. R. No. 2544 of 9 July 1894, are applicable." (G. R. No. 1803 of 9 March 1897, Fin. Dep.)

Taxation of Government buildings—Karachi.—When in 1879, the Government of India ruled that in the interests of the Port of Karachi and of the Provinces of Sind and Panjab all the great export staples such as wheat, hides and seeds should be placed on the octroi free list it acquiesced in the Imperial buildings being assessed to the house tax, if the Bombay Government allowed its Provincial buildings to be similarly taxed. It stated that in Calcutta the railway station, Port Trust properties, and the Government buildings paid the house rates, and there was no reason why similar buildings should not pay municipal taxes at Karachi in common with private properties of the same kind.

Accordingly by G. R. 2760 of 2 Aug. 1883, Gen. Dep., it was ruled that Imperial and Provincial buildings within Municipal limits might be assessed to the house tax at the same rate as private property.

A fresh valuation was then made of these buildings and G. R. 4581 of 21 Dec. 1883, Fin. Dep., sanctioned an annual payment of Rs. 1691-10-to the municipality on account of house tax.

The mode of debiting these payments is laid down in Government of India No. 2333 of 28 July 1883, Dep. of Fin. and Com., G. R. 3167 of 30 Aug 1883, Gen. Dep.

In the opinion of Government neither Post Office nor Telegraph buildings, the property of Government, which are used for the public service, should be taxed: but buildings or quarters, in respect of which rent is paid to Government, whether occupied by employés of these or of other Public Departments, are liable to the tax: and that to State Railway premises, the same principles are applicable that regulate the assessment of similar premises

when the proprietorship thereof is vested in a Joint Stock Company. (G. R. 2557 of 4 May 1901, Gen. Dep.)

This resolution is to be interpreted as only expressing the general views of Government on this subject, and not as affecting G. R. 2760 which is to be considered as conveying the express consent of Government as required by this clause. (G. R. 4589 of 8 Aug. 1901, Gen. Dep.)

See section 144 of the Bombay City Act as to payment of house, &c., taxes on Government buildings.

A traveller's bungalow is exempt under this proviso; so also a Mamlutdar's Kacheri.

There is no objection to a municipality exempting certain Government troops from payment of the conservancy tax, if they so wish to do.

16 **Purposes of profit.**—The object of this was that if the State should acquire railways, they should not be excluded from municipal taxation, railways being used almost exclusively for profit.

Section 135 of the Indian Railways Act, 1890 (Act IX of 1890), is as follows:—

"135.—Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

Taxation of railways by local authorities.

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any local authority, unless the Governor-General in Council has, by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.

(2) While a Notification of the Governor-General in Council under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the Notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General in Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor-General in Council may, at any time revoke, or vary a Notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into any contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

(5) "Local authority" in this sec. means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to, or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

The General Clauses Act X of 1897, sec. 3 (28), provides that "local authority shall mean a Municipal Committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund," (Government of India, P. W. D., Not. 270 of 12 June 1890.)

Used solely for public porposes and not for profit.—On this point the Advocate General expressed the opinion that "as to the premises which are partly occupied for charity (the upper storey) and partly let for rent, the buildings are not exclusively occupied for charity within the section. The Bombay High Court has held that in the case of Mosques where the ground floor was let for rent, the whole Mosque was one building and therefore rateable. In these cases the shops were outside of the Mosque building which was round a quadrangle and the rents were applied to the maintenance of the Mosques. As to the Jamat Khana, on the statement of the case as made out, it was a building exclusively occupied for charitable purposes and therefore exempt.

Railways liability to pay taxes.—G. R. 5733 of 14 Oct. 1905, G. D. publishes papers in which the liability of Railway Administrations to pay municipal taxes is fully discussed.

Government of India Notification No. 9977 of 29 Nov. 1907, published under G. R. No. of 1907, in the B. G. G. of 1907 at p. 1953, declares that "Every Railway Administration in British India shall hereafter be liable to pay in respect of property in any local area, every tax which may lawfully be imposed by any local authority in aid of its funds under any law for the time being in force." See also G. R. 6791 of 21 Nov. 1911, Gen. Dep.

These orders apparently supersede those under G. of I. P. W. D. No. 270 of 12 June 1890, and No. 136 of 5 April 1893 which are set out in the previous edition of this Manual at page 158.

Govt. of India Res. No. 434 R. T. of 17 August 1894, P. W. D. (set forth in G. R. 1818 of 11 September 1894, P. W. D., and quoted in G. R. 3752 of 6 October 1894, Gen. Dep.) is as follows:—

The Governor-General in Council, having carefully considered the question, is of opinion that a general revision of the existing system of local taxation in regard to railways is unnecessary.

2. Should any railway administration, however, consider that any particular tax, or its assessment, is unreasonable or disproportionate to the services rendered, the Governor-General in Council is pleased to decide that an application for the revision of such tax or assessment should be made direct to the Commissioner in charge of the Division in which the tax is levied, or where there is not such a Commissioner, to the officer holding a position corresponding to that of a Commissioner (*e. g.*,) the Collector in the Presidency of Madras or the Duputy Commissioner in Sylhet or Cachar), who is hereby appointed under sec. 135, sub-section (2), of the Indian Railways Act, 1890, to enquire specially into all the circumstances of the case and determine, in communication with the contending parties, the sum, if any, which should be paid.

3 The Governor-General in Council further desires to call the attention of local authorities to the Government of India, P. W. D., Notifications No. 270, dated the 12 June 1890, and No. 136, dated the 5 April 1893 (under which every railway administration was declared liable to pay all taxes legally in force during the year ended on the 30 April 1890) and to direct that *when it is sought to impose any new tax on a railway, application should be made through the Local Government concerned for the sanction of the Governor-General in Council under sec.* 135, sub-sec. (1), of the Act referred to above. In all such applications the reasons for imposing the new tax must be fully explained, and at the same time the views of the railway administration affected thereby should be obtained by the Local Government and submitted together with the application."

17 **Special sanitary cess provisions.**—This is taken from sec. 57 of the old Act of 1873, with some modification. (See note 9.)

Should it be desired to extend the cess to other private latrines, &c., than those already notified, other fresh notices must issue and the procedure provided in section 60 must be gone through again.

If the municipality determines that the cess should not be levied in respect of any private latrines, premises or compounds, all they have to do is to abstain from—

(*a*) Issue of notice to the persons, or inhabitants.

(*b*) Making provision for the cleansing of the private latrines;

and if the municipality have made provision out of the public funds they cannot let the funds be wasted or the service be performed gratituously for individuals. All persons or inhabitants for whom provision has been made at the expense of the Municipal Fund must become liable. The municipality are not bound to make provision, unless they issue the notice with a view to recovery of the cess.

The cess may be made graduated, and it is not necessary that the municipality should charge nothing less than the cost of services to be rendered in this respect.

18 **Notice to persons.**—Under the old Act the notice was to be given to "the occupier or occupiers of any building or land, or to the occupiers generally within the Municipal District, or any recognised division thereof."

The municipality should keep some record of the notices issued, and as the notices issued will operate to create liability to the cess, it would seem desirable that the record of notices should be accessible to the public.

Meaning of Occupier.—The following opinon of the Advocate General, quoted in G. R. 3817 of 12 Sept. 1895, Gen. Dep., is of interest.

"The expression 'occupier' does not, in my opinion, include all persons physically occupying or living in the premises which are the subject of the notice, but only such of them as live there, either as owners, or tenants, or otherwise, so to say, in charge of, and responsible for the premises. For instance, if a house is partly occupied by A, its owner and his family and servants, and partly by B (a tenant of A), with his (B's) family and servants, and partly by C (a relative of A), whom A permits to live with his (C's) family and servants in a portion of the house, A, B and C would, I think, be the occupiers of the house, who whould be liable to pay the cess, and their wives and children and servants, respectively, although in a physical sense occupying, or occupants of the house, would not be 'occupiers' within the meaning of the section. The cess accordingly would be payable by A, B and C, and I find nothing in the section to prevent their being made liable by the rule (to be framed under sec. 32 of Bombay

Act II of 1884), to pay a fixed sum per month or per year for each member of their respective household, *i. e.* families and servants, living with them on the premises, the subject of the notice."

19 **Inhabitants**.—See note 7, sec. 11, note 5 sec. 63 and note 7 sec. 60.

20 **Consolidated cess.**—Very frequently this is desirable, in order to save trouble and render taxation less unpopular.

It may be assessed on a sliding scale, and may be levied on the basis of the house-tax assessment, adding a certain percentage of the house-tax on account of this general cess.

60. Every municipality before imposing a tax shall observe the following preliminary procedure:

Procedure of municipality preliminary to imposing tax.[1]

(*a*) they shall, by resolution passed at a general meeting,

[2](i) select for the purpose one or other of the taxes specified in sec. 59;

[3](ii) prepare rules for the purposes of clause (*i*) of section 46 prescribing the tax selected;

and shall by such resolution and in such rules specify,

[4](iii) the class or classes of persons or of property, or of both, which the municipality desire to make liable, and any exemptions which they desire to make;

[5](iv) the amount for which, or the rate at which, it is desired to make such classes liable;

(v) all other matters which the Governor in Council may so require to be specified.

[6](*b*) When such resolution has been passed, the municipality shall publish the form of rules so prepared with a notice in the form of Schedule A prefixed thereto.

[7](*c*) Any inhabitant of the municipal district objecting to the imposition of said tax, or to the amount or rate proposed, or to the class of persons or property to be made liable thereto, or to any exemptions proposed, may within one month from the publication of the said notice send his objection in writing to the municipality, and the municipality [8]shall take all such objections into consideration, or shall authorise a committee to consider the same and report thereon, and, [9]unless they decide to abandon or to modify the proposed tax in accordance with such objections, shall submit the same with [10]their opinion thereon, together with the notice and rules aforesaid, in the case of a City Municipality, to the [11]Governor in Council, and in the case of any other municipality to the Commissioner.

1 **Procedure.**—The form and matter of most of this section is founded on sec. 21 of the old Act of 1873, clauses 1 and 2 of which have been greatly amplified, and the procedure laid down with greater detail and clearness.

Tax includes any toll, rate, cess, fee, or other impost leviable under this Act (sec. 3 (14)).

This procedure is necessary only in cases of imposition, in which is included any alteration so as to increase the burden or nature of the tax, and not to an abolition or suspension of a tax.

The Act does not refer to the period for which a tax may be imposed, hence there would appear to be no objection to the imposition being limited to a definite period, but this would scarcely can be necessary seeing that a tax may be abolished or suspended at any time with sanction. See sec. 62 proviso (*c*) which implies that a tax may be imposed for a fixed period.

2 **Principles which should guide municipalities in imposing taxes—Powers of Civil Courts to interfere.**—G. R. No. 889, Gen. Dep., 7 March 1891—Memo. from the Remembrancer of Legal Affairs.—

"5. The duty of prescribing taxes by rules implies the exercise of powers conferred by sec. 21 which, like all enactments conferring powers, must be strictly construed.

Maxwell, 264.

"6. In all cases of the user of compulsory powers and privileges, that a corporation may be justified in the proceedings which it is about, and free from liability on account of the same, four requisites must concur in the user. It must be—

(1) within the authority expressed or implied possessed by the corporation;

(2) with due regard to the formalities whenever essential formalities have been imposed;

(3) without negligence;

(4) with *bona fides*.

The absence of any of these four requisites will render the proceedings in question *ultra vires* in the widest sense, that any person, member of the corporation or not, affected thereby, may take measures to restrain the same and that the concurrence and approval of each and every member cannot legalise the proceeding so as to deprive the injured party of his redress.

Brice on *Ultra Vires*, 500.

"7. These principles have been frequently applied to the case of municipal taxation, and retrospective taxation, as in excess of the powers, the omission to consider objections, as a negligent exercise thereof and the omission to issue notice as a want of regard to essential formalities imposed, have been held fatal to the legal existence of a tax.

I. L. R. 1 M. 158, 7 M. H. C.R.249 and Maxwell, p. 181. I. L. R. 9 B. 51. I. L. R. 7 B. 399.

"8. When a tax has been legally imposed the Courts will not question its incidence. They are concerned only with the question whether the powers have been duly exercised in accordance with the constating instruments.

"9. When the proper authorities have carefully and honestly exercised the powers actually vested in them by laws in imposing a tax, the Courts cannot question its incidence.

"10. 'Discretion must, however, be exercised honestly and in the spirit of the Act, otherwise the act done would not fall within the statute; it is not to be arbitrary and fanciful, but legal and regular, and must be exercised within the limits to which an honest man, competent to the discharge of his office, ought to confine himself, that is within the limits and for the objects intended by the Legislature.'

Maxwell, 101 and cases there quoted.

"11. Thus the Statute 43, Eliz., C. 2, sec. 1, requires the overseers of every parish to raise 'by taxation of every inhabitant, person, vicar, and other and of every occupier of * lands in the parish in such competent sum as they shall find fit,' a stock for * the relief of the poor. Blackburn, J. said 'though the words of this enactment might seem to give the overseers discretion to tax each inhabitant in such arbitrary sum as they might think fit, it has long been settled that the taxation of the different persons must be *equal* and in proportion to the value of their respective means.'

Jones v. Mersey Docks, 35, L. J. M. C. 1.

"12. Similarly the unlimited power of taxation conferred by sec. 21 of Bom. VI of 1873 must be exercised with an honest and not negligent discretion, and should the municipality neglect the procedure or perfunctorily perform the duty of considering the objections imposed on it by the Legislature, the Law Courts would apparently grant relief.

"13. Further, the power of sanctioning being vested in the Governor in Council, or such officer as he appoints in this behalf, it seems that the Courts would be justified in granting relief in the improbable contingency of such sanction being negligently or dishonestly accorded. Sec. 21 of Bom. VI of 1873 (now 60) clearly contemplates that taxes should render not individuals but a 'class of persons or property to be made liable thereto.' If to take an extreme case, a tax, which out of a population of many thousands of persons could operate only on one or two individuals, were negligently sanctioned without any enquiry as to incidence or reasonable consideration of objections, the principle that would justify the Law Courts from preventing an abuse of statutory powers might warrant them in interfering with such an illegally reckless abuse of discretionary powers.

"14. But in the absence of gross neglect or dishonesty in the imposition of a tax, its legality after it had been once imposed could not, it would seem, be questioned.

"15. Should a tax thus legal in its inception, subsequently become unfair in its incidence, the Governor in Council alone would, under sec. 41 of Bom. II of 1884 (now 93), have power to suspend its levy.

"16. With reference therefore to the proposed loom tax, I would venture with great deference to submit, that it would be well to ascertain what proportion the population on which the proposed tax would operate would bear to the residue of the population *pro tanto* relieved of the burden. In a municipality where the staple industry was weaving, it might be as manifestly equitable to impose a light tax on that trade, as it would be manifestly inequitable to impose the same tax when there was only one individual on whom it could be levied

"17. The incidence of a tax of local operation only would presumably be on the produce rather than on the consumer, except in cases where the consumption was practically limtied to the locality, and this consideration might perhaps affect the propriety of the tax.

"18. Bom. VI. of 1873, Sec. 66, (now 139 (1)) and Bom. II of 1884, Sec. 33 (*b*), (now 48 (*b*)) gives municipality power to license places used for certain trades, and Bom. VI of 1873 (73), empowers municipalities to charge fees for license under those Acts. This special power would seem to indicate that, as a general rule, other taxation of particular trades was not contemplated by the Legislature. But sec. 21 (now 60) of the Act clearly indicates that the primary incidence of municipal taxation may effect *a class of persons or property* and the only requisite to validate class, *not* personal, taxation appears to be the consideration of objections and the approval and sanction by Government or their duly appointed officers (sec. 32 (*k*), Bom. II of 1884), which consideration and sanction must be given, not arbitrarily, but in the exercise of an honest and careful discretion."

G. R. 1273, Gen. Dep., 10 April 1891.—Letter from the Remembrancer of Legal Affairs.—

"2. I think that the proposition contained in paragraph 8 is incontestable, but requires to be more clearly stated. When a tax which has been proposed by a municipality has been published for objections and duly considered with reference to those objections, and has been sanctioned by the proper authorities, 'it shall be imposed accordingly' (section 21 of Bom. VI of 1873), and the courts cannot question the fairness of its incidence.

"3. But it is open to the courts in any case, when the amount of a tax is claimed as due under section 84, to go into the question whether the imposition of the tax in that particular instance is in accordance with the sanctioned rule under which the tax is leviable.*

**Imperatrix* v. *Karmashankar Bhaishankar* (Bom. H. C. Cr. R. No. 86 of 1888) and *Municipality of Ahmedabad* v. *Juma Punja* No. 5 of 1891.

"4. Thus for instance, as in the case referred to in my No. 360 of 11 March 1891, if a municipal tax duly published and considered were sanctioned on *houses*, the Courts could not go into the question whether it was fair to tax houses, but if it were attempted under section 84 to recover the tax on a *section* of a house, the Courts could and would be bound to go into the question, if raised, as to whether the imposition were in accordance with the sanctioned tax.

"5. This point is very clearly brought out in the case at I. L. R. 7 C. 322, in which it was held illegal to refuse to hear evidence as to the applicability of a legally imposed assessment to the case of an alleged defaulter.

"6. The Courts cannot question the fairness of incidence of a sanctioned tax, but can always consider the applicability of the rule sanctioning the tax to any particular individual or set of circumstances, *vide* 8 B. H. C. R. 213 A. C. J. and when the words used in imposing the charge are ambiguous, will construe them in favour of the subject upon whom the tax is to be imposed."

3 **Rules prescribing taxes.**—See note 18 to sec. 46 (i).

G. R. 270 of 16 Jan. 1896 gives a model form of notice of house tax under sec. 21 of the old Act, and G. R. 1182 of 12 Mar. 1896 of wheel tax. These are not now required under clause (*b*) of this new section, but may be useful as a guide for preparing these rules.

G. R. 386 of 9 Feb. 1893, G. D., quotes an opinion of the Legal Remembrancer on this point under the old Act.

4 **"Classes of persons or of property or of both."**—Both classes need not be specified. This specification is necessary in order to enable the Courts to ascertain whether a particular individual belonged to the class declared to be liable, otherwise the tax would be *ultra vires*.

5 **"Amount for which, or rate at which"**—This must be something definite so as to convey to the rate-payer definite information as to the precise amount of rent for which he is liable under the proposed tax. Indefinitness or ambiguity is fatal to the legality of a tax.

6 **Publication of proposed rules.**—This may be duly made by insertion in the *Bombay Government Gazette*. (General Clauses Act, sec. 23.) See note 36 sec. 48.

7. **Notice of objections.**—This clause is an amplification of sec. 21, clause 2, and part of clause 3. The points on which objections can be taken are more clearly set out in accordance with the extended provisions of the preceding clauses.

Any inhabitant.—Presumably the legislature intends that taxes should not be levied on other than inhabitants. See note 19 sec. 59.

Notice in writing.—This writing or application is exempt from any Court Fee (Act VII of 1870, sec. 19, clause 21.)

8. **"Shall take all such objections into consideration".**—The following remarks in I. L. R. 21 Bom. 630, *The Surat Municipality* v. *Ochhavaram Jamnadas* are intructive.—

"It appears that no less than 6,283 petitions bearing 10,458 signatures were sent in, in reply to the notice. In accordance with a resolution passed by the municipality on the 20 December 1892, they were left on the Hall table for twenty-one days for pernsal by the Commissioners. At the end of that time, namely, on the 14 January 1893, a special general meeting was held to consider the objections. At that meeting it was proposed and seconded that "The municipality, having considered the objections, and being of opinion that they are invalid, the rules passed on the 23 November 1892, be forwarded for sanction by Government." Three amendments were proposed successively to this proposition, *viz.*, (1) that the scheme should not be submitted to Government, as it was illegal; (2) that the petitions be severally considered and disposed of; (3) that the printed petitions only be read and considered separately. Each was voted on and negatived, and the original proposition was ultimately put to the meeting and carried.

"It seems to us that this is a consideration within the meaning of the clause which requires consideration only and is silent as to the amount, as well as the quality of that consideration. It is to be noted also that it is the objection only that has to be considered. The petitions may be innumerable, the objections may be few. In the present case it has been pointed out to us that they are very few: for the most part the petitions contain only individual objections to pay a house tax and statements that a water-supply was not necessary. During the twenty-three days that the petitions lay on the table, most of the Commissioners went and read them, three of them read the whole, one read fifty, another a thousand, another four or five thousand, and so on. One witness only (143) says that he did not read any; but he had been sick and had not attended the meetings for one year and a half before he was examined. The members, therefore, who attended at the special meeting were generally well acquainted with the nature of the objections and so able to discuss and consider them. Apparently a full discussion took place about them. No one was refused a hearing, and it is not suggested that the meeting was brought to an end by any application of the closure or other abrupt method. All that was refused was the reading and consideration of the petitions severally. That, in our opinion, was unnecessary; in the present case it was almost impossible."

9 **Abandon or modify tax.**—This clause "unless they decide * * * such objections" now disposes of all question as to whether the resolution, with its rule, &c., should be forwarded to Government in case the municipality decide to abandon the proposal to tax. Now though, not clearly so stated, it may be implied that the proposal may be shelved by a resolution to that effect.

But the clause as worded raises the question what is to be done, if the municipality "decide to modify the proposed tax in accordance with such objections."? The section lays down that the resolution with the rules, notice and objections are to be submitted to Government "*unless* the municipality decide to modify the tax; but if it does so decide to modify,

no procedure is provided. The practice in vogue has been to send on the modifications with the report or opinion, &c., to Government, and doubtless in the absence of definite legislative provisions on the point, this will have to be followed. But any modification involving any alteration in the incidence of the tax will have to be republished under clause (*b*). See notes to section 47.

The Panjab Act, section 45 (4), provides that "if no objection is received, or if all such objections, having been considered as aforesaid, are deemed insufficient, the committee may forward its proposal to Government."

10 **Municipality's opinion.** — Plaintiff sued to recover from the municipality certain taxes levied from him on the ground that such levy was illegal. *Held* the requirements of this clause are not satisfied by the Chairman of the Managing Committee alone considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative, the Commissioner. The provision for forwarding the opinion of the municipality on the objections is an essential part of the machinery provided by this section for the legal imposition of a tax. (*Municipality of Poona* v. *Mohanlal Lilachand*, I. L. R. 9 Bom. 51.)

This ruling is approved of in I. L. R. 21, All. 348. *Strachey* v. *Municipality of Cawnpore.*

When a tax is to be imposed, the fairness of its incidence is to be tested :—

(*a*) locally by considering the objections of the inhabitants, and,

(*b*) with reference to wider interests by the Governor in Council.

11 **Governor-in-Council.**—This in Sind, means the Commissioner in Sind, section 3 (3). The Panjab Act provides for submission also to the Governor-General in Council in cases requiring such further sanction.

[1]Power to sanction, modify and impose conditions.

61. The Governor in Council, or the Commissioner, as the case may be, may either refuse to sanction the rules submitted, or may return them to the municipolity for further consideration, or if no objection, or no objection which is in his opinion sufficient, was made to the proposed tax within one month from the publication of the said notice, may sanction the said rules either—

(*a*) without modification, or

(*b*) subject

[2](i) to such modifications not involving an increase of the amount to be imposed, or

(ii) to such conditions as to the application within the municipal district to any purpose or purposes of this Act specified in such conditions, of the whole or any part of the proceeds of such tax,

as he deems fit.

1 **Orgin of section.**—This section now embodies the existing practice under the provisions of clause 3 of sec. 21 of the old Act Bom. VI of 1873 and clearly lays down the extent of Government powers of revision, which are in accordance with the Panjab Act, sec. 45 (5).

2 **Modification of tax.**—This power is necessary, but is limited to the two cases specified.

The Government of India some years ago directed that the proceeds of tolls imposed by municipalities should be devoted specially to the repairs of roads and streets. Consequently power is taken by the clause to impose such a condition when sanctioning a toll. Occasionally also when Government are considering proposals for taxations they desire to make some modifications, and this clause will now enable Government to sanction the taxation, together with

such modification, and save the municipality and the rate-payers the trouble and delay or re-notifying the taxation afresh.

A modification involving an increase would be a fresh imposition which would require to be re-notified. (See note sec. 47.)

Sanction having been given, imposes on the municipality the duty to impose the tax, and this is not subject to the publication of the rules under the next section.

Publication of sanctioned rules with notice.[1]

62. All rules sanctioned under sec. 61 with all modifications subject to which the sanction is given, shall be published by the municipality in the district for which they are prescribed, together with a notice reciting the sanction and the date and serial number thereof, and the tax as prescribed by the rules so published [2]shall, from [3]a date which shall be specified in such notice and which shall not be less than one month from the publication of such notice, be imposed accordingly, and the proceeds thereof shall be applied by the municipality in accordance with all conditions, if any, subject to which under section 61 the sanction was given :

provided that

[4](*a*) a tax leviable by the year

(i) shall not come into force except on one of the following dates, *viz.*, the first day of April—the first day of July—the first day of October—the first day of January—in any year and

(ii) if it comes into force on any day other than the first of April, it shall be leviable by the quarter, till the first day of April then next ensuing;

[5](*b*) on or before the day on which a notice is issued under this section, the municipality shall publish such further detailed rules as may be required, and as may have been approved by the Governor in Council or by the Commissioner, as the case may be, under the first clause of the proviso to section 46, prescribing the mode of levying and recovering the tax therein specified, and the dates on which it or the instalments, if any, thereof, shall be payable;

[6](*c*) if the levy of a tax, or of a special portion of a tax, has been sanctioned for a fixed period only, the levy shall cease at the conclusion of that period, except so far as regards unpaid arrears which may have become due during that period.

1 **Publication of rules.**—This is duly made if published in the *Bombay Government Gazette* " and such publication shall be conclusive proof that the rule has been duly made." (Sec. 23 and 24 (*e*) General Clauses Act).

By section 45 (9) of the Panjab Act, a notification of the imposition of a tax is conclusive evidence that the tax has been imposed in accordance with the Act. It is conclusive that the prescribed procedure has been observed in the imposition, but does not prevent questions being raised as to its invalidity. (See note 12, section 65.)

2 **Shall be imposed.**—These words are imperative and the tax must be imposed, unless before the date fixed, the municipality under section 47 abolishes or suspends it with the sanction of Government by suspending or rescinding the rules prepared under section 60 (*a*) (ii). The Panjab Act says "the committee may direct the imposition of the tax in accordance with such proposal" after Government sanction obtained.

Appeal.—The Act provides no appeal against this imposition, but the validity of the tax can be brought into question by suit in a Civil Court, and an injunction thus obtained against the levy of an illegal tax or the refund of it, if paid. See note 2 to section 60.

Section 86 allows an appeal to a Magistrate only when a notice of demand for payment of any tax is made. See notes to that section.

The Panjab Act, sec. 52 (1), provides that an appeal against the assessment or levy of any tax under the Act shall lie to the Deputy Commissioner or other officer empowered by Government, and in doubtful cases, for a reference to the High Court.

The Madras Act provides only for appeal to the municipal Council from the Chairman's orders (1) fixing assessment (sec. 64), (2) imposing a tax on vehicle, animal or servant.

The Bom. City Act provides for appeals against any rateable value or tax to the Chief Judge of the Small Cause Court.

3. **Date of imposition.**—So that at least 2 months must elapse between the time of proposal to impose a tax and its actual imposition. The date must be definite and not one to be determined upon at a later period, though with the sanction of Government the date may be postponed to another definite date.

Under the Panjab Act the date of coming into force of the tax is to be fixed by the committee after the tax has been returned sanctioned by Government, and "no tax shall come into force in less than three months from the date of the meeting directing the imposition."

4. **Date of levy.**—This is taken from the Panjab Act, sec. 45 (8) (*e*).

In the case of a tax under Madras Acts V of 1878 and I of 1884, described as a yearly tax, but payable by half-yearly instalments, a half-yearly liability is incurred in respect thereof by the tax-payer. (*Wilson* v. *Madras Municipal Commissioner*, I. L. R. 8 Mad. 429.)

The Madras Act III of 1891 provides for imposition of an annual tax payable in 2 instalments, but no case but that of imposition of the annual tax at commencement of the official year. The section as to notice shows only one legal period of imposition, *viz.*, such commencement of the year. Therefore a tax to which the sanction of Government was obtained after such commencement was illegal, and could not have retrospective effect. (*Bates* v. *Municipality of Ballary*, 7 Mad. H. C. R. 249.)

The Panjab Act leaves the dates of payment and instalments to the committee, subject to approval of the Deputy Commissioner.

The Madras Act makes the tax on buildings and lands payable half-yearly, within 30 days after commencement of each half-year.

The words "any year" at end of clause (*a*) (*i*) were substituted by Bom. III of 1902 sec. 2. for the words "official year in which such notice is published."

5. **Clause (*b*) rules under sec. 46.**—This clause was not in the old section.

Held that a tax cannot be made payable prior to the date of its levy being sanctioned by Government. *Held* further, that unless a rule has been framed under section 32 (now 46) specifying the date on which the tax is payable, it is payable only at the expiration of the time for which it is declared to be payable. (*Impx.* v. *Anandrao*, Bom. H. C. Cr. Ruling No. 39 of 1891.)

"*Payable in advance*" do not mean that the taxes are payable on the 1st day of the year. They would be payable in advance on demand at any time within that year. (*Impx.* v. *Raja*, Bom. H. C. Cr. Ruling No. 79 of 1896.)

6 **Clause (c).**—This clause disposes of the points discussed in the G. R. 4887 of 31 Aug. 1898, Gen. Dep.

(2).—*Assessment of and liability to rates.*

63. (1) When a rate on buildings or lands or both is imposed, the municipality shall cause an assessment-list of [2]all buildings, or lands, or buildings and lands in the municipal district to be prepared, containing

[1]Preparation of an assessment-list.

(*a*) the name of the street or division in which the property is situated;

(*b*) the designation of the property, either by name or by number, sufficient for identification;

[3](*c*) the names of the [4]owner and [5]occupier, if known;

[6](*d*) the annual letting value or other valuation on which the property is assessed; and

[7](*e*) the amount of the tax assessed thereon.

[8](2) For the purpose of making such assessment on property as aforesaid, the municipality may, from time to time, appoint any person or persons, whether councillors or not, and whether remunerated or not; and any person or persons so appointed may for such purpose make an inspection of any such property.

Power to inspect.

[9] Provided that in a municipal district for which there is a Municipal Commissioner such Municipal Commissioner may make such inspection.

[10](3) On the requisition of the municipality or of such person, or of the Municipal Commissioner, as the case may be, the [4]owner or [5]occupier of any such building or land shall, within such reasonable period as shall be specified in the requisition, be bound to furnish a true return to the best of his knowledge or belief and subscribed with his signature—

Returns to be furnished.

(*a*) as to the name and place of abode of the [4]owner or [5]occupier or of both;

(*b*) as to the dimensions of such building or land and the [6]annual letting value or other valuation thereof.

1 **Origin of section.**—Sub-sec (1) is reproduced from sec. 56 (1) of the Panjab Act XX of 1891.

See the Bom. City Act, sec. 156, for particulars to be entered in the assessment book.

Assessment on wrong basis 'ultra vires'.—See I. L. R. 38 Bom. 293 noted sec. 3 (11) which followed the ruling in I. L. R. 26 Bom. 294 noted sec. 65.

2 **All buildings and lands.**—See the Govt. Builings Act, 1899, Part III, Appendix, in the previous edition of this Manual.

Exemptions from taxation.—This Act contains no general exemptions, but under section 59, the *imposition* of all taxes is subject to any general or special orders which the G. G. in C. may make and also to the sanction of Government, and proviso (*a*) to that section exempts certain public buildings, property, &c., except those which Government give express consent to tax.

See, also, the Municipal Taxation Act, Part III, page 440 of previous edition.

A building used in whole or in part for purposes other than those of public worship is not exempt from taxation under sec. 119, Mad. Act. V of 78. The feeding of Brahmins is not

an act of public worship within the meaning of that section. (*Thambu Chetti Subraya* v. *Arundel*, I. L. R. 6 Mad. 287.)

The Madras Act, section 63 (1), excepts (*a*) light houses, piers, wharves, jetties, charitable hospitals, dispensaries and other buildings or lands, to the extent to which they are used for public, charitable or religious, but not residential purposes, (*b*) burial and burning grounds, and (*c*) buildings on lands belonging to the municipality.

The Bom. City Act exempts from the general tax (*a*) buildings exclusively occupied for public worship or for charitable purposes; (*b*) buildings of Govt. or municipality if tax primarily leviable from Govt. or municipality. This does not exempt (*c*) buildings in which any trade or business is carried on, and (*d*) buildings from which rent derived whether or not such rent is applied exclusively to religious or charitable purposes.

3 **Name, if known of owner or occupier.**—Under the Madras Act, section 68, if name not known, it is sufficient in all notices and proceedings under the Act to designate him as the "owner" or the "occupier."

4 **Owner.**—See definition, sec. 3 (8) and note as to liability for taxes.

5 **Occupier.**—This is not defined. See note 18 to sec. 59.

Maxwell on Interpretation of Statutes states:—"The word has received different meanings, varying with the object of the enactment. Ordinarily, the tenant of premises is the "occupier" of them, although he may be personally absent from them (*Reg.* v. *Poynder*, I. B. O. C. 178); while a servant or an officer who is in actual occupation of premises, *virtute officii*, would not be an "occupier." (*Clark* v. *Bury St. Edmunds*, I. C. B. N. S. 23; *Bent* v. *Roberts*, 3 Ex. D. 66; *R.* v. *Spunell* L. R. I. Q. B. 72, *McClean* v. *Pritchard*, 20 Q. B. D. 285.)

By the Bom. City Act, sec. 158, any building or land let to 2 or more persons holding in severalty, may be assessed either, (i) the whole as one property, or (2) with the consent of the owner, each several holding or 2 or more such together, or each floor or flat, as a separate property. In case (1) a drawback of $\frac{1}{3}$th of the tax may be sanctioned; and if so, by sec. 178, no refund of the general tax is claimable.

The plaintiff as the *naib* of a *zemindar* occupied a small house adjoining the *zemindar's kacheri* and paid no rent but as the latter's servant was liable to be removed at any time. The municipality having assessed him with municipal taxes, he brought a suit for a declaration that the imposition was illegal. *Held* as the occupier was the *zemindar* and not plaintiff, the latter was not assessable. (*Govinda C. Gangully* v. *Kailash C. Sanyal*, 15 Ind. Cas. 909.)

6 **Annual letting value.**—See definition sec. 3 (11).

Under sec. 154 of the Bom. City Act, a sum equal to ten per centum of the annual rent was to be deducted therefrom to fix the rateable value; this deduction was in lieu of all allowance for repairs or on any other account whatever.

If a municipality should decide to allow this deduction, it can apparently be done under the term "or other valuation."

Where it was the intention of a municipality in drawing up certain rules that a cess should be levied not only on houses actually yielding rent, and the cess was recited in the rules as imposed on every house "yielding a yearly rent." *Held* that the expression must be treated as equivalent to "capable of yielding a yearly rent." (*Emp.* vs. *Mahadu*. Bom. H. C. Cr. R. No. 23 of 1893.)

"*Or other valuation.*"—These words have been substituted for "market value" in the Bill which originally contained a definition of this term. Both have now been omitted as it appeared that the retention of the term as defined would cause difficulties, and it was considered that when for some reason or other the "annual letting value" as ordinarily accepted, was not an appropriate basis of assessment, the municipality should be left discretion as to the best measure of value. The definition was as follows. "With reference to any building or land, for the purpose of any assessment thereon, "market value" means the price which, if sold in the open market, such building or land, exclusive of any crops growing thereon or furniture or machinery contained or situate therein or thereon, might reasonable be expected to realise."

Method of assessing house tax. G. R. 1829 of 3 June 1892, Gen. Dep.—"Government desire that the result of a recent enquiry regarding the fairest method of assessing house tax in municipalities should be made known. It appears that the most common practice is to tax buildings according to their estimated sale value or by arbitrary classification; and it has been alleged that under this plan, the pressure of the tax is inequitable, inasmuch as the letting value of houses is disregarded, and house-owners, whose families have fallen from a former greater estate, being unwilling to let or sell their ancestral homes, are rated at the same amount as their far wealthier neighbours.

It appears probable that, except in one or two large towns, it is impossible to find, as yet, skilled valuers, who can be trusted to strike a fair average of the sale value of houses, or indeed to be approximately correct in the majority of individual cases, but it is to be hoped that by degrees the supply of skilled valuers will increase; for it is evident that unless the valuation of houses, for the purposes of a municipal rate, either on the basis of their capital or of their rentable value, is strict and equitable, dissatisfaction at this form of municipal taxation is not likely to decrease. It would be well if in course of time Municipal Boards could be induced to assimilate their systems more and concentrate them more on one fixed principle. The great majority of opinion before Government condemns the system of valuation of houses on their capital value, and favours the adoption of one whereby houses shall be taxed on their letting value.

The following sliding Scale for assessment on the annual rental value has been proposed:—

Annual rental value.	Amount of annual house tax.
	Rs. a. p.
Not more than Rs. 10	.....
More than „ 10 and not more than Rs. 15	0 8 0
„ „ 15 „ „ 25	1 0 0
„ „ 25 „ „ 35	1 8 0
„ „ 35 „ „ 45	2 0 0
„ „ 45 „ „ 60	2 8 0
„ „ 60 „ „ 75	3 0 0
„ „ 75 „ „ 100	4 0 0
„ „ 100 „ „ 125	5 0 0
„ „ 125 „ „ 150	6 0 0
„ „ 150 „ „ 200	8 0 0
„ „ 200 „ „ 300	10 0 0
And for every additional Rs. 100, or part of Rs. 100, an additional	3 0 0

This view appears sound in principle, and, though Government do not wish to press for an immediate adoption of a common system, they hope that by degrees the system of house taxation may become more uniform and more equitable."

Principles of assessment.—"The position in life of the owner of the house" is an unsound ground on which to base the valuation of a house. (G. R. 4331 of 26 Nov. 1892, Gen. Dep.)

Buildings in one compound, when separately assessable.—The plaintiff was the owner of a compound in which there were several buildings. One occupied by himself; two others in immediate connection with it occupied by his relatives gratis, and the fourth let to a tenant. Although all of these and their respective out-offices (being in one and the same compound) might, if in the occupation of the plaintiff, have properly been treated as forming one house and assessed as such, yet in so far as the plaintiff has in a manner separated one building from the rest by letting it to a tenant at a rent, we think that the municipality was justified in treating that building as a "house" within Bombay Act VI of 1873, and sec. 5, Cl. I. of the Rules of the municipality made under it. But we cannot regard the permission given by the plaintiff to his relatives to occupy gratis two of the buildings as in any wise severing those buildings from the residue of the plaintiff's house; their separate assessment is unsustainable. (*Rango* v. *Hughes*, P. J. 1881 p. 41).

Tax calculated on area.—Section 63-A of the Madras Act provides that in lieu of a building tax on annual value, the tax may be calculated according to area covered by the building varying according to situation and description.

Gross annual rent or value.—When municipal taxes are paid by the tenant to the landlord of a house, they should be considered as forming part of the gross annual rent or annual value on which the municipality is entitled to levy the house-tax under section 42 (Act XX of 1891, Panjab Code) (46 P. R. 1910; 79 P. W. R. 1910; 6 Ind. Cases 725.)

7 **Amount of tax.**—Under the Bombay City Act, section 140 (c), the general tax on buildings and lands is not less than 8 and not more than 12 per centum of their rateable value, plus not less than $\frac{1}{8}$th and not more than $\frac{3}{8}$ths per centum of such value.

Under the Madras Act, section 63, the rate is not to exceed 8$\frac{1}{2}$ per cent. of the annual value, or in case of lands not occupied by buildings and land occupied by native huts, not exceeding 4 annas for every 80 square yards. No tax upon lands used solely for agricultural purposes. And the municipality may exempt from tax buildings and lands the annual value of which is not more than Rs. 6, if it be the owner's sole property liable to tax.

Under the Panjab Act the tax is not to exceed in certain municipalities 10 per cent. and in others 7½ per cent on the annual value; or not exceeding in some of 1½ annas, in others 1 anna per square yard of the ground area; or not exceeding Rs. 4 in some, and Rs. 3 in others, per running foot of frontage in streets or bazaars.

Under the N.-W. Provinces Act it is not to exceed 7½ per cent of the annual value The Central Provinces Act says 7½ per cent. of the gross annual letting value. Under the Madras Act it is not exceeding in any case 8½ per cent. on the annual value; this in the case of buildings may be substituted by a rate calculated according to the area covered by such buildings.

8 **Appointment of assessor and power to inspect.**—The marginal note is incomplete and should be as above. The clause as to power of inspection is taken from the City of Bom. Act, section 155 (3).

Municipality may search record in Sub-Registry Offices.—If in order to obtain information as to the sales of houses and lands in the municipal district in the valuation of houses, the municipal officer finds it necessary to search the records of such sales in the Sub-Registration Office, he may be allowed to do so with the permission in each case of the District Registrar and free of charge. (G. R. 5117 of 27 May 1911, Rev. Dep.)

9 **Proviso.**—This is inserted by section 16 of the Amending Act of 1914. As the power of the municipality to assess the amount of tax on property has been delegated to the Municipal Commissioner, if any, this proviso is necessary.

10 **Returns.**—This is taken from the Bombay City Act, section 155 (1) and (2).

The Panjab Municipal Act contains similar provisions, section 56 (2).

By-laws may under section 48 (1) (*i*) be framed for enforcing the supply of this information and a fine imposed for infringing the by-law. (See note, section 48 (1) (*i*)).

The words "or of the Municipal Commissioner, as the case may be" have been inserted by the Amending Act of 1914.

64. When the assessment-list has been completed, the municipality shall give public notice thereof, and of the place where the list or a copy thereof may be inspected: and every person claiming to be either [2]owner or occupier of property included in the list, and any agent of such person, shall be at liberty to inspect the list and to make extracts therefrom without charge.

[1]Publication of notice of assessment-list.

1 **Assessment list to be notified.**—This is taken from the Panjab Act, sec. 57.

The list should be completed and the notice under the next section issued at least 2 months before the 1st April in order to allow of time for the hearing of objections before that date.

As to furnishing copies and charging fees for same see note 8, sec. 46.

[1]**65.** (1) The municipality shall at the time of the publication of such assessment-list give public notice of a time, not less than one month thereafter, when they will proceed to revise the valuation and assessment: and in all cases in which any property is for the first time assessed or the assessment is increased, they shall also give [3]notice thereof to the owner or occupier of the property, if known.

[2]Public notice of time fixed for revising assessment-list.

(2) All objections to the valuation and assessment shall be made to the municipality before the time fixed in the notice, by application in writing, stating the grounds on which the valuation and assessment are disputed,

[4]Objections how to be made.

and all applications so made shall be registered in a book to be kept by the municipality for the purpose.

[5]Hearing of objections.

(3) In a municipal district for which there is a Municipal Commissioner such Municipal Commissioner, and elsewhere the managing committee, or any committee or committees to which the municipality delegate the powers and functions of the managing committee in this behalf, or any officer of Government to whom, with the permission of the Commissioner, the municipality delegate, and they are hereby empowered so to delegate, the powers and functions of the managing committee in this behalf, shall, after allowing the applicant an opportunity of being heard in person or by agent,

(*a*) investigate and dispose of the objections,

(*b*) cause the result thereof to be noted in the book kept under sub-section (2), and

[6](*c*) cause any amendment necessary in accordance with such result to be made in the assessment-list.

[7]Authentication of list.

(4) When all objections made under this section have been disposed of, and all amendments required by sub-section (3) have been made in the assessment-list, the said list shall be authenticated in a municipal district for which there is a Municipal Commissioner by the signature of the Municipal Commissioner, and elsewhere by the signatures of the chairman and at least one other member of the managing committee or, or if the municipality have delegated the powers and functions of the managing committee in this behalf to any other committee or to an officer of Government, by the signatures of not less than two members of such committee or of the officer aforesaid, and the person or persons so authenticating the list shall certify that no valid objection has been made to the valuation and assessment contained in the list except in the cases in which amendments have been made therein.

Custody and inspection of list.

(5) The list so authenticated shall be deposited in the municipal office, and shall there be open for [8]inspection during office hours to all [3]owners and [3]occupires of property specified therein, or to the agents of such persons, and a notice that it is so open shall be forthwith published.

(6) Subject—

[9]Authenticated list how far conclusive.

(*a*) to such alterations as may thereafter be made therein, under the provisions of the next following section, and

(*b*) to the result of any appeal made under section 86,

the entries in the list so authenticated and deposited shall be accepted as conclusive evidence,

(i) for the purposes of all municipal taxes, of the annual letting value or other valuation of all buildings and lands to which such entries respectively refer, and

(ii) for the purposes of any tax imposed on buildings or lands, of the amount of each such tax leviable thereon throughout the official year to which such list relates.

1 **Origin of section.**—See sections 160 to 166 of the Bom. City Act for corresponding provisions.

Sub-sec. (1) is taken from the Panjab Act, sec. 58 (1), and sub-sec. (2) from 55 (2), and the latter parts of sub-sec. (1) and (2) from the Bom. City Act, sections 163 (2) and 164, respectively.

Sub-sec. (3) is taken from the City of Bom. Act, sec. 165, and also partly from the Panjab Act, sec. 59 (1).

Sub-sec. (5) is taken from sec. 59 (2) of the Panjab Act.

Sub-sec. (6) is new and is taken partly from the Panjab Act, sec. 59 (1) and the Bom. City Act, sec. 166 (2).

2 **Public notice of time.**—See section 154 (3) as to service. Under sub-section (4) no notice shall be invalid for defect of form.

The Vice-President of a municipality purporting to act under the provisions of sec. 61 of the Towns Improvement Act, 1871, which empowers the Commissioners to prepare and revise the list of tax-payers and to issue notices of assessment to persons liable to the profession tax, issued a notice of assessment to D, although no case of emergency existed within the meaning of section 27 of the Act, enabling the President or in his absence, the Vice-President to exercise the powers vested by the Act in the Commissioners:—

Held that, the insufficiency of the notice of assessment was no answer to a charge under section 62 of the Act against D for exercising his profession without paying tax. The maxim, *Quod fieri non debet factum valet*, applies to such a case. (*Municipal Commissioners of Mangalore* v. *Davies*, I. L. R. 7, Mad. 65.)

Time limit cannot be disregarded.—Where the regulations for fixing an assessment provided that applications objecting to assessment should be heard not less than 15 days from the publication of the notice of the assessment and the assessing authority gave notice that the applications must be made within 3 days from such notice. *Held* that a Civil Court had jurisdiction to entertain a suit to recover taxes so levied by a Cantonment authority; that the assessment was not legal and that notwithstanding the provision in the regulations that so long as the directions in the regulations have been in substance and effect complied with any regularities or omissions are not to nullify the action of the authorities. Not only had the regulations not been in substance and effect complied with, but the assessor had disregarded the express provisions of the regulations, and as the matter was one requiring very attentive consideration by the person assessed, reasonable time had not been given him to take legal advise upon the subject.

The fact that an appeal had been made and rejected and such decision was final, did not oust the jurisdiction of the Court in the circumstances. (I. L. R. 38 Bom. 293 noted section 3 (11).

3 **Notice to owner or occupier.**—A letter was sent to plaintiff as follows:—"I have the honour to forward herewith a list showing the amount of land and water-taxes due for 1895-96, and to request that you will be good enough to cause the amount to be remitted." *Held* that the notice was bad, as it did not state that the plaintiff's name would be inserted at a future date, specified in the notice, so as to give her an opportunity, if so advised, of appealing against the assessment. It is merely a demand for a tax assumed to have been already properly assessed. It follows that the provisions of sec. 71 of the Madras Act of 1884 have not been complied with and section 262 (2) has no application. (*Municipal Council of Tanjore* v. *Umamba Boi Saheb*, I. L. R. 23, Mad. 523.)

Owner or occupier.—See notes 4 and 5, section 63.

4 **Objections to assessment.**—See 160 of the Calcutta Act is much to the same effect.

Unless this application is made, there can be no appeal against the assessment, sec. (86) (*b*) (*c*).

The Panjab Act allows the alternative of an oral application if made "at the time fixed in the notice."

5 **Hearing of objections.**—Sec. 160 of the Calcutta Act provides that when applications are received notices should be given to the objector of a time and place at which his objection will be investigated.

The first 16 words of this sub-section are inserted by the Amending Act of 1914.

The object of the provisions as to delegation to an officer of Government is to enable a municipality to divest itself of the burden of appeals, and to give power to appoint some practical assessor independent of local influences.

6 **Amendment of assessment** —This includes the power to *increase* the assessment. This is necessary not only to meet cases of under assessment, but also to discourage needless appeals.

7 **Authentication of list.**—Sub sec. (4) is from sec. 59 (1) of the Panjab Act, and is somewhat similar to sec. 166 of the City of Bom. Act. The suggestion that this should permit, in the case of City Municipalities, a delegation also to the Chief Officer, has not been adopted. But the Amending Act of 1914 by the introduction of the 20 words following the word "authenticated" have empowered a Municipal Commissioner, when there is one, to do so.

8 **Inspection of list.**—The Bombay City Act says "Every person who reasonably claims to be the owner or occupier" of some premises entered in the list, or his agent "shall be permitted, free of charge, to inspect and take extracts" so far as relates to the said premises. Persons not so entitled are to be charged a fee.

9 **List how far conclusive.** —Section 219 of the Bombay City Act provides that every rateable value fixed under the Act and the amount of every sum claimed from any person under the Act on account of any tax, if no complaint or appeal made, is 'final.

Most of the other Municipal Acts in India make provision for the assessment being more or less final. These provisions are referred to in the notes hereto. The Panjab Act sections 49 & 54 follow the Madras Act.

The conclusiveness is only as here stated confined to the annual letting value or other valuation and the amount of the tax. This does not prevent the *validity* of the tax itself being brought into question by a Civil suit. See note 2, section 60.

Thus on these two points Civil and Criminal Courts are precluded from allowing any question to be raised. *N. B.*—As to Magistrate's jurisdiction see note 2 to section 161.

Even under the older Act, where no such conclusiveness was specially assigned to an assessment, it had always been held that if the assessment was made in accordance with the Act, the Courts could not question it. It was only if the tax was invalid or *ultra vires*, that is, in breach of the provisions of the Act and rules or beyond the powers given, that the Courts could interfere; the *validity* of the tax, not its incidence could be questioned.

Civil Courts cannot over-ride decision as to amount of assessment.—Plaintiff, without resorting to any of the remedies provided by the Act, sued to recover house-tax paid by him on the ground of over-valuation. He also contended that the assessment had not been made according to the rules. *Held* that the valuation was left by the Act in the hands of the municipality, and having provided a remedy by way of appeal to the general committee, the Civil Court had no power to over-ride that decision. 23 Bom. 446 followed. (See note to section 161.) The powers of a Civil Court are no greater under the Act than those of a Magistrate. (*Morar* v. *Borsad Municipality*, I. L. R. (1901) 24 Bom. 607; 2 Bom. L. R. 417.

Civil Court can only interfere with assessment, if tax ultra vires or mala fides.—In the absence of proof of *mala fides*, perversity, or manifest error, Civil Courts ought not to interfere with the house valuation made by a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation. 24 Bom. 607 followed. (*Kasandas Raghunathdas* v. *Ankleswar Municipality*, I. L. R. (1903) 26 Bom. 294, 3 Bom. L. R. 882.)

In I. L. R. 21 Bom. 630, *Surat City Municipality* v. *Ochhavaram*, the municipality imposed a house-tax on plaintiff, who sued for an injunction to restrain its levy on the ground that it had not been imposed in accordance with the Act. *Held* that the tax had been legally imposed and that even if the assessment was made upon an erroneous basis and not in

accordance with the amended rules, this would not affect the validity of the tax; it would only give the person the right of appeal under the Act to set the valuation right.

When assessment ultra vires suit will lie for a refund, or for an injunction.—Where the municipality did not forward objections to the tax with their opinion to Government, the tax was not legally imposed (I. L. R. 9 Bom. 51 note 10 sec. 60.)

Where the notice of the meeting at which tax imposed was not given as required by the Act (I. L. R. 7 Bom. 399 note 4 sec. 26.)

Where the tax was wrongly levied a second time on goods re-imported (8 Bom. H. C. R. A. C. J. 213 note 1 sec. 59.)

Held that the levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year. (*Pitambardas* v. *Jambusar Town Municipality*, I. L. R. 17, Bom. 510, 1892, R. J. 296.)

Tax illegal if made on wrong basis.—Civil Courts have jurisdiction to entertain a suit to recover the amount of taxes levied by the cantonment authorities and paid under protest on the ground that the assessment was illegal. This may be the case both when a serious demand requiring very attentive consideration had been made on the plaintiffs and reasonable time has not been given to the latter to take advice on the subject and when the cantonment authorities have wholly disregarded the basis on which the rate should have been assessed, by assessing the rate upon the gross income of the plaintiffs. *Kasandas* v. *Ankleshvar* (1901) 26 Bom. 294, followed.

In assessing a tax based on the annual letting value of premises it is illegal to take the annual income derived from the premises as the basis of calculation.

In case of payment by a cheque, limitation runs not from the date of the delivery of the cheque, but from the date of the receipt of the money by the payee. (*Secretary of State for India* v. *Major Hughes*, (1913) 38 Bom. 293.)

Suit to recover tax illegally levied—Court cannot itself make the assessment, and having exceeded its jurisdiction High Court could interfere.—Plaintiff filed a Civil suit to recover from a municipality house tax illegally assessed and recovered from him. The municipality contended that the Court could not go into the question of the assessment and that in any can the amount of tax on the valuation of the house was correct.

The lower Court held that it had jurisdiction, that the resolution of the municipality imposing the tax was illegal, that the valuation was made illegally, but the Court itself went into the question of the valuation and found that it was correct and that therefore plaintiff was not entitled to any relief. This was confirmed on 2nd appeal.

On appeal to the High Court, (the appeal being treated as under s. 622 C. P. Code) it was contended that the valuation and assessment having been held to be illegal, the lower Courts should have held the levy of the tax also illegal, and that it was a misconstruction of the ruling in I. L. R. 26 Bom. 294 to hold that even where the valuation is made illegally, the Court is entitled to see whether it is correct or not.

Held, setting aside the decree and awarding plaintiff's claim, that the levy having been found to be illegal plaintiff was entitled to recover the money by suit; also that the lower Court had no jurisdiction to fix the amount of the house tax and thus exercised functions which the legislature vested only in the municipality, and having so far exercised its jurisdiction improperly, the High Court could interfere under sec. 622 C. P. Code. (*Hamirsing* v. *Amod Town Municipality*, (1904) 7 Bom. L. R. 288.)

The following rulings are by the Allahabad High Court.—

If requirements of Act not fulfilled tax illegal and suit lies for refund or injunction.—In imposing a new tax the procedure laid down in section 42 of Act No. XV of 1883 must be strictly followed. Where therefore neither the special meeting of the Board at which an assessee's objections to a proposed tax were considered, nor the special meeting at which the tax was finally imposed, were properly constituted within the meaning of section 29 of Act No. XV of 1883 (that is, there was no proper quorum at one meeting, and at the other, which was an adjourned meeting, there was a breach of the law that only such business should be brought up as would have been brought before the original meeting which was adjourned), it was held that the imposition of the tax was invalid. I. L. R. 9 Bom. 51, approved.

Held, also, that there is nothing in Chapter VIII of the Specific Relief Act to prevent the High Court from granting an injunction against a municipality as part of the remedy in a regular suit. I. L. R. 17 Calc 329, considered. I. L. R. 19 All.: 313 referred to. (*Strachey* v. *Municipal Board of Cawnpore*, I. L. R. 21, All. 348.)

N. B.—This was followed in I. L. R. 35 Cal. 859.

In I. L. R. 28 All. 600, noted sec. 167 the High Court entertained a suit for an injunction against the levy of an illegal tax notwithstanding that sec. 73 of the N. W. P. & O. Act of 1900 provided that "no objection shall be taken to any valuation or assessment, nor shall the liability of any person to be sued or taxed be questioned in any other manner or by any other authority than as provided in this Act."

In I. L. R. 32 All. 491 it was held that the Civil Courts will interfere and grant a refund of an octroi tax levied illegally and over and above what the municipality was entitled to.

Rates illegal as municipality not properly constituted.—A municipality imposed certain rates to which plaintiff was assessed to the extent of Rs. 3. He at first refused to pay, but under pressure of a distress warrant, did pay and then brought a suit for recovery of the amount levied and damages, on the ground that the rates were not legally imposed. *Held* that as the municipality had not been properly constituted, the rates it imposed were illegal; that plaintiff was not bound to pay them and could recover them as well as damages by a civil suit. (*Bepen Behary Sen* v. *Chairman Santipur Municipality*, 1 Ind. Cas. 388.)

Octroi not in accordance with Act.—Octroi duty so levied in as much as it was levied on goods outside of the limits of the municipality, *held* illegal and refund granted. (See 4 Ind. Cas. 951.)

The following rulings are under the Madras Acts.—

Suit will lie if tax note in accordance with Act.—"Sec. 85 of Madras Act III of 1871 (which provides that no objection could be taken to any valuation or assessment, nor to liabilily to such assessment or any tax, except as provided in the Act) is not a bar to a suit to recover money wrongfully levied as a tax, because such so called tax had no legal existence.

There is no provision in that Act for levying any tax described in section 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in sections 58—61 If that machinery is not applied, no liability to pay such tax can arise.

Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to A of his assessment under such tax was not given him till 8th October in that year. *Held* that the tax had no legal existence, and that A was entitled to recover from the Commissioners money which they had collected from him as and for such so-called tax. 7 Mad. H. C. R. 249) followed.

A statute not only enacts its substantive provisions, but as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. In the present case, the legislature has imposed certain duties both upon the tax-payer and upon the Commissioners. Those duties,—as to the tax-payer, enforceable by penalties,—are to be performed at a particular time. There is here implied a 'latent proposition of law' which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed." (*Leman Damodarya* I. L. R. 1 Mad. 158).

If tax legally imposed Civil Courts cannot question its incidence.—A suit was brought to recover a professional tax levied on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. Defendant pleaded that the Court had no jurisdiction. Upon reference, *Held* that the Court had not jurisdiction to adjudicate in the matter in contest. The procedure prescribed for the imposition of the tax has been conformed to by the Commissioners, and the tax having thus a legal existence, no suit will lie to contest its incidence. In *Leman* v. *Damodaraya* (I. L. R., 1 Mad. 158) on which the District Munsiff relies, the machinery prescribed for imposing the tax did not exist when it was imposed, and it was held that the suit would lie as there was no legally sanctioned tax. The matter of fact in dispute in this suit is no part of that machinery, and in the case of error in respect to it, the only remedy the plaintiff has is the appeal allowed by sec. 85. If he either fails to prefer the appeal or if the appeal preferred by him is disallowed by the Commissioners, sec. 85, is a bar to a suit to contest the assessment. (*Kamayya* v. *Leman*, I. L. R. 2 Mad. 37).

N. B.—This was followed in I. L. R. 19 Mad. 10.

If tax illegal the Court has jurisdiction.—The municipality at Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the municipality at Nagapatam. The Company complied with the demand under protest and sued the municipality for a refund of the amount paid to the District Munsiff's Court.

Held (1) the Court had jurisdiction to hear and determine the suit: (2) The municipality at Tuticorin had no right to levy the tax on the Railway Company and the decree

directing the amount levied to be refunded was correct. (*Municipality Tuticorin* v. *S. I. Railway*, I. L. R., 13 Mad. 78.)

Section 262 of the Madras District Municipalities Act, 1884, is as follows:—

"(1) No assessment, charge or demand of a tax made under the authority of this Act shall be impeached or affected by reason of any mistake in the name, residence, place of business or occupation of any person liable to pay the tax, or in the description of any property or thing liable to the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error, provided the directions of this Act shall have been in substance and effect complied with; and no proceedings under this Act shall, for want of form, be quashed or set aside in any Court of Justice.

(2) No action shall be maintained in any Court to recover money paid in respect of any tax, toll or fee assessed or levied, or any payment collected, under this Act, or to recover money or damages by reason of any assessment made, tax, or toll, or fee levied, or any payment under this Act, provided that the provisions of this Act relating to the assessment and levy of taxes, tolls and fees, and to the collection of payments have been in substance and effect complied with.

(3) No distress or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distress, inventory, or other proceeding relating thereto; nor shall such person be deemed a trespasser *ab initio*, on account of any irregularity afterwards committed by him. Provided that every person aggrieved by such irregularity may recover satisfaction for any special damage sustained by him."

The plaintiff built a house at Nellore, the construction of which was completed on the 15th of August 1893. The municipal authorities of that place, being governed by the Madras District Act, gave notice of assessment on the 11th of September, levied the tax as assessed, and credited it as the tax due for the half-year ending on the 30th of September 1893. The plaintiff now sued to recover the amount paid by him as having been illegally levied.

Held, that the mistake in levying the tax for the 1st half year was protected by sec. 262 and did not come within the proviso which is aimed at illegal exertions made arbitarily and without any regard to the provisions of the Act. Case not distinguishable from 2 Mad. 37 *supra* which was followed. Distinguished from I. L. R. 13 Madras 78. Hence suit not maintainable. (*Municipal Council, Nellore* v. *Rangayya*, I. L. R. 19 Madras 10.)

N. B.—In I. L. R. 24 Mad. 205 noted *infra* the Judges who also decided this case say that this ruling is correct on the assumption that there had been a substantial compliance with the requirements of the Act.

In I. L. R. 23 Mad. 523 note 2 *supra* there was no compliance with the provisions of the Act.

Tax illegally levied—plaintiff entitled to refund.—Plaintiffs, an English Insurance Co. carrying on business by its agents-general merchants—within the municipal limits, sued to recover the professional tax levied from it. *Held* that the Co. was not liable to the tax and as it was illegally levied, plaintiff was entitled to a decree for its refund. I. L. R. 22 Cal. 581 followed. (*Municipal Council, Cocanada* v. *Royal Insurance Co.* I. L. R. 21 Mad. 5.)

By sec. 63 of the Madras Act buildings exclusively used for charitable purposes are exempt from taxation. *Held*, that the levy of such a tax was illegal and plantiffs were entitled to recover. The tax had no legal existence and therefore it could not be said that it was collected under the Act; and so was distinguishable from I. L. R. 19 Mad. 10. (*Fischer* v. *Twigg*, I. L. R. 21 Mad. 367.)

Where a person not liable to be taxed had been taxed. *Held* that a suit was maintainable against the municipality, as the provisions of the Act had not been complied with and therefore it was not protected by sec. 262 of the Madras Act of 1884. The question whether there has been a substantial compliance with the Act is one of fact which has to be determined with reference to the particular circumstances of the case. In I. L. R. 19 Mad. 10 the Court was not satisfied that any provisions of the Act had been contravened. I. L. R. 13 Mad. 78 was followed. I. L. R. 21 Mad. 5 was a very similar case. I. L. R. 35 Cal. 859 approved. (*Municipal Council, Cocanada* v. *Standard Life Co.*, I. L. R. 24, Madras 205.)

N. B.—See I. L. R. 34 Mad. 130, which says this ruling is no longer applicable.

Tax illegal when made on a wrong basis.—Where a proprietor of a printing press was taxed upon his estimated gross income instead of the net income which was the correct basis under the Act for determining the class in which he should be placed, the provisions of the Act had not been in substance complied with so as to oust the jurisdiction of the Court under

section 262 (2) of the Madras Act, and the assessment was held to be illegal. (*Municipal Council of Mangalore* v. *Cordial Bail Press, Mangalore*, 14 M. L. J. 410.)

The following rulings are under the Bengal Acts.—

Assessment illegal if in disregard of principles of Act.—"Where the assessment was based upon a percentage of the estimated cost of the buildings in entire disregard of the principle, which the municipality was bound by the Act to adopt as the basis of their assessment, namely, the gross annual rent at which the house might be expected to be let from year to year. *Held*, that the municipality had exceeded their jurisdiction; that the provision in sec. 117 of Bengal Act IV of 1876, that the assessment shall be final and conclusive, merely meant so far as the municipality had made it in the exercise of their powers. [See *Rex* v. *Morely*, 2 B., 1041; *Rex.* v. *Plowright* 3 Mad. Rep. 95] and that therefore the power of the High Court to quash proceedings on *certiorari* was not affected by such a clause, and it would interfere. (*Nundo Lal* v. *Corporation for the Town of Calcutta*. I. L. R. 11 Cal. 275.)

N. B.—This was followed in I. L. R. 21 Cal. 319 and 35 Cal 359.

Only amount of assessment conclusive, not liability of the person.—Section 114 of the Bengal Act makes the decision of the Commissioners on the appeal against an assessment 'final,' that is to say, as between the applicant and the Commissioners, no further appeal being allowed to the entire body of Commissioners or to any other authority. This clause, standing above, would not bar the interference of the Civil Courts.

Sec. 116.—"No objection shall be taken to any assessment or rating, nor shall the liability of any person to be assessed or rated be questioned in any other manner or by any other authority than in this Act is provided." The word 'liability' here means liability apart from the question of occupation of a holding, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding. The sec. 116 has therefore no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding, and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding, is not therefore barred by sec. 116.

Where the person is assessed because he is the occupier of a holding, and as a matter of fact he is not such occupier. *Held* that the assessment was *ultra vires* and the suit would lie notwithstanding sec. 116 of the Act. I. L. R. 11 Cal. 275 followed. The ruling in *Manesar Das* v. *The Collector and Municipal Councillor of Chapra*, I. L. R. 1 Cal. 409 was under the old Act of 1864 and was no longer applicable. (*Dwarka Nath Datt* v. *Addya Sundari*, I. L. R. 21 Calc. 319.)

Where assessment ultra vires it may be set aside.—In *Navadip Chandra Pal* v. *Parmanand Sabba* (1898, 3 C. W. N. 73) it was held that if the assessment made by the municipality is *ultra vires*, there is nothing in the Act to prevent a rate-payer from seeking in a Civil Court a decision that the action of the municipality was *ultra vires* and that the assessment is not binding on him.

"An assessment of tax under section 85 clause (*a*) of the Bengal Municipal Act (III of 1884, as amended by Act IV of 1894 B. C.) made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the municipality, is *ultra vires* and illegal; and the Civil Court has jurisdiction to set aside such an assessment. 1. L. R. 1 Cal. 409, distinguished as there the question was as to the amount of the tax. 3 C. W. N. 73 referred to. (*Kameshwar Pirshad* v. *Chairman, Bhabna Municipality*, I. L. R. 27 Cal. 849.) This was followed in I. L. R. 35 Cal. 859.

A civil suit will lie for a refund of latrine tax which has been levied without compliance with the formalities of the Act. Section 321 of the Bengal Act requires that the scale of fees to be paid should be fixed by the municipality at a meeting. If this was not done, the tax was *ultra vires*. (*Becher Ram* v. *Chairman, Chapra Municipality*, 15 C. W. N. 519; (1911) 9 Ind. Cas. 218, 13 C. L. J. 674.)

Civil suit will lie where tax ultra vires.—Section 116 Bengal Municipal Act (III of 1884 which provides that no objection shall be taken to any assessment or rate in any other manner than in this Act provided, does not take away the jurisdiction of Civil Courts in a case in which it is a leged and established that the assessment, the propriety of which is in controversy is open to objection on the ground that it is *ultra vires*. It is only when the action of the municipality has been exercised in conformity with the powers conferred upon it by the Act, that the Civil Court has no authority to interfere. The distinction is obviously well-founded on principle. A corporation, which is invested with authority to assess taxes, is really invested with a *quasi*-judicial power, and although its action when taken in conformity with the provisions of the law, which created the authority, may not be liable to challenge in the Civil Courts, it does not enjoy a similar immunity when that action can be challenged on the ground that it has been taken either in excess of or in contravention of the powers con-

ferred upon it by the Statute. An analogous view has been taken by the other Indian High Courts with reference to other statutory provisio s of similar scope and import. Reference may usually be made to the decision of the Madras High Court in *Municipal Council of Cocanada* v. *The Standard Life Assurance Company* (I. L. R., 1900. 24 Mad. 205) where the previous decisions were reviewed, as also to decisions of the Bombay High Court in *Municipality Wai* v. *Krishnaji* (I. L. R. (1898) 23 Bom. 446.) *Morar* v. *Borsad* (I. L. R. (1900) 24 Bom. 607) and *Kesandas* v. *Ankleshvar Municipality* (I. L. R. (1901) 26 Bom. 294). The true test is, whether there has been a substantial disregard of the provisions of the law which creates the authority of the municipality and regulates its powers and duties. As my learned brother has already pointed out, a similar view had been taken by this Court in *Nundo Lal Bose* v. *Corporation of Calcutta* (I. L. R. (1885) 11 Cal. 275), in which Sir Richard Garth, C. J., relied, in support of this position, upon the principle deducible from the cases of *Rex* v *Moreley* (1760) 2 Bur. 1041) and *Rex* v. *Plowright* ((1865) 3 Mad. Rep. 95) which shew that the distinction recognised between a case, in which the Corporation has acted within its powers, but probably exercised an erroneous discretion, and another in which the Corporation has acted in contravention of its powers, is analogous to the distinction between an error of fact and an error of law. To put the matter in a different way, the Civil Court is not called upon to try the merits of the question, but to see whether the authorities possessed of limited jurisdiction have, exceeded their bounds. A similar view has been taken in the English Courts in more recent cases. *Ex-Bradlaugh* (1878) (3 Q. B. D. 509) and *Reg.* v. *Bradley* ((1893) 17 Cox, C. C. 739) and the provisions of section 220 of the Municipal Corporation Act of 1882 (45 and 46 Victoria Chap. 50) have been similarily interpreted. The principle applicable to cases of this description was elaborately examined by their Lordships of the Judicial Committee in *Colonial Bank of Australasia* v. *Willan* (1874. L. R. S. P. G 417). where it was pointed out by Sir James Colvile that the Court would have jurisdiction to interfere and quash the order of the quasijudicial authority upon the ground either of a manifest defect of jurisdiction in the tribunal that made the order or of manifest fraud in the party procuring it. It was also ruled that objection on the ground of defect of jurisdiction may be founded on the character and constitution of the Court or on the nature of the subject matter of enquiry, or on the absence of some preliminary proceeding which was necessary to give the jurisdiction to that tribunal. But the objection of defect of jurisdiction cannot be entertained, if it rests solely on the ground that the tribunal has erroneously found a fact, which was essential to the validity of the order and which it was competent to try. While mere erroneous exercise of judgment is not reviewable by the Civil Court, any excess of jurisdiction makes the act liable to challenge in such Court, *State* v. *Williams*, (1904) 123 Wis. 61; 150 N W. 1048) *Hacker* v. *Howe* (1904) 101 N. W. 255) *Douglas* v. *Stone* (1903) 191 V. S. 557, *Stanley* v. *Albaney*, (1886) 121 V. S. 535.

Held, that if a municipality assess a person not in accordance with the Act, it acts *ultra vires* and suit would lie. 11 C 275; 3 C. W. N. 73; 27 C. 849 *supra* followed. *Chairman of Giridhi Municipality* v. *Srish Chandra Mozumdar*, I. L. R. (1908) 35 Cal. 859;) (1908) 12 C. W. N. 709.)

Defect in appointment of assessor did not invalidate assessment.—Valid assessmeut could not be impeached by a civil suit.—The question of appointing a paid assessor under sec. 46 of the Bengal Act was raised at a meeting of Municipal Commissioners, as an amendment to a substantive motion; the amendment was lost; but the same question was again raised as a substantive proposition within six months from the date of the first meeting; the proposal being carried, an assessor was appointed who revised the assessment of the plaintiff. The plaintiff applied for a review under sec. 113, but the assessment was confirmed under sec. 114 of the Act which provided that the decision was final. Plaintiff sued for a refund on the ground that the assesssor not having been legally appointed the assessment was *ultra vires*. *Held*, that the appointment of the paid assessor was not *ultra vires*, inasmuch as the subject of the appointment of an assessor had not been finally disposed of at the first meeting, and therefore its reconsideration was permissible; and that, whether the assessor was or was not legally qualified to make any assessment did not invalidate it. The Act did not state what machinary was used for making the valuation nor the method or means of assesment. The assessment being valid and having been confirmed under sec. 114 it could not be impeached by a civil suit. (*Chairman of Chittagong Municipality* v. *Jogesh Chandra Rai* (1909) I. L. R. 37 Calc. 44; 3 Ind. Cas. 1.)

Valid assessment could not be impeached by civil suit—Plaintiff's property was reassessed and the assessment raised. He contended that the assessment was not made in accordance with the Act inasmuch as no alteration or improvement had been made in the holding since the previous assessment and that the assessor made the assessment on the report of the Tax Daroga. *Held* that under section 116 of the Bengal Municipel Act, the decision of the Objection Committee in matters regarding the amount of assessment is final, and the Civil Court has no jurisdiction to interfere in such matters. It can only interfere when the assessment is *ultra vires*. I. L. R. 1 Cal. 409 followed, 3 C. W. N. 73, and I. L. R. 27 Cal. 849,

distinguished as not applicable to this case. (*Chairman, Municipal Board, Chapra* v. *Basudeo Narain Singh* (1910) I. L. R. 37 Cal. 374; 11 C. L. J. 400; 14 C. W. N. 437; 5 Ind. Cas. 321.)

Assessment illegal, if contravenes Act, but in doubtful cases suit should be dismissed.—When a Municipal Corporation has acted in contravention of the statute, it is open to a Civil Court to declare the assessment is illegal. 35 Cal. 859, 12 C. W. N. 709, 7 C. L. J. 631; 5 Ind. Cas. 321; 14 C. W. N. 437; 37 Cal. 374; 11 C. L. J. 400 relied upon.

Where there is some indication that the assessment has possibly been illegal, but the plaintiff has not been able to establish, with regard to any particular holding, that the assessment has been, on the facts, made in contravention of the statute and is liable to be declared *ultra vires* by a Civil Court, the suit should be dismissed. (*Shah Hamid Hussain* v. *Chairman, Patna Municipality*, 17 C. W. N. 812, 15 Ind. Cases 548.)

10 **Official year.**—See definition, sec. 3 (10). This begins 1st April. Under the Panjab Act, sec. 59, "the tax so assessed shall be deemed to be the tax for the year commencing on the 1st day of January next ensuing, as also in the case of a tax then imposed for the first time for the period between the commencement of the tax and such 1st day of January." Under the Madras Act, it is to "have effect from the beginning of the financial year following that in which it is made."

66. (1) The municipality may, at any time, alter the said list by inserting the name of any person whose name [2]ought to have been inserted, or by inserting any property which ought to have been inserted, or by altering the valuation of or assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, after giving [3]notice to any person interested in the alteration, of a time, not less than one month from the date of service of such notice, at which the alteration is to be made.

[1]Amendment of assessment list.

(2) Every objection made by any persons interested in any such alteration, before the time fixed in the notice, and in the manner provided by sub-section (2) of the last preceding section, shall be dealt with in all respects as if it were an application under the said section.

Objections how dealt with.

(3) Every alteration made under this section shall, subject to the result of an appeal under section 86, have the same effect as if it had been made on the earliest day in the current official year in which the circumstances justifying the alteration existed.

[4]Effect of amendment.

1 **Amendment of list.**—Sub sec. (1) is taken almost verbatim from Panjab Act, sec. 60 (1).

There is apparently nothing to prevent any preson interested in an amendment moving the municipality under this sub-section. The Bom. City Act, sec. 167 (1), expressly provides that the municipality "may, upon the representation of any person, or upon any other information" make the amendment.

The amendments are limited to those stated in this sub-section. The Bom. City Act extends them to "striking out the name of any person not liable, * * * or by making or cancelling an entry exempting any premises from liability." It is doubtful whether this can be done under this sub-section.

2 **"Ought to have been."**—This apparently applies to a liability existing at the time of the revision under the preceding section. The expression in the corresponding section of the Bom. City Act is "ought to be."

If the liability arises subsequent to the publication of the list, the tax apparently is not leviable until the person or property is brought on the list in the next official year.

This is in accordance with the practice in England where assessments are made *rebus sic stantibus, i. e.*, supposing the tenements to stand as they are when the assessment is made, any increase being made only when the revised assessment of the next year requires it.

The Madras Act, sec. 73 (1), provides for notice being given to the municipality when any building is built, re-built or enlarged, within 15 days of completion or date of occupation, whichever first happens; then the Chairman assesses the tax which becomes payable for that half-year, unless the date of completion or occupation falls within the last 2 months of that half-year, in which case no tax or enhanced tax is to be levied for that half-year.

No similar provision exists in this Act.

See notes to sec. 68, as to persons ordinarily primarily liable and on the transfer of title.

3 **Notice.**—See note 3 sec. 65.

4 **Time when amendment takes affect.:**—Sub-sec. (3) is taken from the City of Bom. Act, sec. 167 (2).

Under the Madras Act, sec. 66 (3), it is to have effect from the beginning of the financial year following that in which it is made.

Official year—See definition, sec. 3 (10).

New assessment-list need not be prepared every year.

67. (1) It shall not be necessary to prepare a new assessment-list every year. Subject to the condition that every part of the assessment-list shall be completely revised not less than once in every four years, the municipality may adopt the valuation and assessment contained in the list for any year, with such alterations as may be deemed necessary, for the year immediately following.

(2) But the provisions of sections 64, 65 and 66 shall be applicable every year as if a new assessment-list had been completed at the commencement of the official year.

1 **Origin of section.**—This section is taken from sec. 168 of the City of Bom. Act. The Panjab Act sec. 61, contains similar provisions, except as to the revision every 4 years.

Under the Madras Act this complete revision is to be at least every 5 years.

Tax from whom primarily leviable.

[1]**68.** Every tax imposed in the form of a rate on buildings or lands or on both, shall be leviable primarily from the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or land or holds them on a building or other lease from the Secretary of State for India in Council or from the municipality, or on a building lease from any person. Otherwise the said tax shall be primarily leviable as follows, namely :—

(*a*) if the property is let, from the lessor;

(*b*) if the property is sublet, from the superior lessor;

(*c*) if the property is unlet, from the person in whom the right to let the same vests:

provided that on failure to recover any sum due on account of such tax from the person primarily liable, such portion of the sum may be recovered from

[2]Recovery from occupiers.

the occupier[2] of any part of the buildings or lands in respect of which it is due, as bears to the whole amount due the same ratio, which the rent annually payable by such occupier bears to the aggregate amount of rent so payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof, if any, stated in the authenticated assessment-list, whichever of those two amounts is the greater:

[3]Remedy of occupier in such case.

provided further, that for any sum paid by, or recovered from, any occupier who is not primarily liable under this section, he shall be entitled to credit in account with the person primarily liable for the payment of that sum.

1 **Origin of section.**—The first part of this section is taken from sec. 146 (1), (2), of the Bom. City Act.

The Panjab Act makes all the taxes specially named in the Act payable by the owner of the property, except the water-tax which is to be paid by the occupier. The Madras Act makes the tax on buildings and lands payable by the owners.

In England, the rates on labourers cottages which are assessed below the value of £ 10, are recoverable from the landlord, and not from the tenant, owing to the great trouble of recovering rates from the poorest classes. A proposal for similar provision in this section was rejected by the Special Committee.

By the Bom. City Act, sec. 159, if the name of the person primarily liable is not ascertainable, it is sufficient to designate him in the list and notice as "the holder."

The Bom. City Act, sec. 146 (3), makes a tenant or his legal representative, whose tenancy exceeds one year, and who has built upon the land, primarily liable, whether he himself be the occupant, or his legal representative, or a sub-tenant. Sec. 147 provides for apportionment of responsibility for tax where premises let or sub-let; and sec. 148 provides that the person primarily liable is entitled to credit the tax, if he pays rent to another, to that other.

By sec. 159 (2) if the actual occupant does not give the information necessary to determine who is the person primarily liable, he himself is liable.

2 **Recovery from occupier**.—This is taken, with some modification, from the Bom. City Act, sec 209 (1). Sub-sec. (3) of that section provides that arrears due for more than one year, or for any period during which the occupant was not in occupation is not recoverable from him. This is provided for in the proviso to sec. 87 which see.

As these taxes are levied in advance, some difficulty will be experienced in working this proviso. 1*stly* what is meant by "failure to recover"? Does it mean after the municipality have exhausted *all* means prescribed by the Act for recovery, or only when, after service of notice of demand, the amount is not paid? 2*ndly* as the tax due is for the ½ year, and under proviso to sec. 87, the occupier is liable only for the period of his occupation, this will have to be recovered from the occupant at the expiration of each month of his occupancy.

Sec. 110 of the Madras Act provides for recovery from the occupier if not paid after 15 days from service of notice or bill, but no occupier is liable to a prosecution before a Magistrate for such recovery or to a civil suit, unless he has wilfully prevented distraint, or a sufficient distrain t.

Occupier.—See note 5 sec. 63.

3 **Remedy of occupier.**—This is from the Bom. City Act, sec. 209 (4).

Transfers of property.—The Bombay City Act, secs. 149 and 151, requires notice (as per form) to be given of every transfer, both by the person primarily liable for the tax as well as the transferee, within 3 months of the transfer, otherwise, the transferer continues liable, until notice is given; the transferee also, being liable. Also, on death of person primarily liable, the person entitled as heir or otherwise, to give notice within one year from the death. Sec. 152 requires that when any new building is erected, or any building is re-built or enlarged, or any vacant building is re-occupied, the person primarily liable should give notice thereof within 15 days from date of completion or occupation, whichever first occurs, or of the enlarge-

ment or re-occupation. Sec. 153 requires notice to be given of the demolition or removal of a building, otherwise, the person primarily liable continues liable as if the building had not been demolished or removed.

Similar provisions were inserted in the Bill, but have been omitted from the Act, but if necessary, they may be provided for apparently by the rules to be prepared under sec. 60 (*a*) (ii) and (iii).

The Karachi Municipality framed a rule making a transferee liable for all arrears of taxes due on the premises, while at the same time the liability of the transferer also continued. This rule having complied with the requirements of sec. 21 of the Act of 1873, as to publication, sanction of Govt., &c., *Held*, that the liability thus created was a legal liability, and the arrears could be recovered from the transferee. Judge Batty in the judgment says—"The only form, which the objection to this rule can take, is that the rule purports to define not only the initial liability of a definite class to the tax, but the liability of another class to arrears which, having already accrued due, could no longer be regarded as a tax when demanded from the transferee, but only as a debt already incurred by somebody else."

"This objection would be fatal if the rule, instead of being (as it purports to be) a rule, duly sanctioned by the Commissioner in Sind and presumably in accordance with the approval and notice required under section 21, were a mere rule regulating recovery. But it purports to be part of the definition of the class of persons to be made liable, and is included under a heading "Persons liable to pay the said rates," and there is no definition of the classes liable, except in the two rules under this heading. The liability is not imposed as anything but a liability to a rate, and if there be any hardship in the imposition on a specified class of a liability which is somewhat differentiated from that of other classes, that is a matter with respect to which any objections by inhabitants made would presumably have been considered before approval was accorded under section 21 of the Principal Act. There is nothing in section 21 to fetter the discretionary power of approving any definition of the classes of persons to be made liable. The definition makes the class of transferees directly liable to the tax as such. It creates a new fiscal liability, and is not a mere transfer of an ordinary debt based on some obligation independent of the tax. Transferees may know from the first that they incur such liability. It is not a transfer of a bad debt effected by the municipality, but a distinct imposition in exercise of statutory powers." (*Imp.* v. *Palumal*, Sind Sadar Court Reports 1899, Vol. I, p. XV, Crim. Rulings.)

69. (1) When any building or land which is assessed to a rate payable by the year, or in respect of which a special sanitary cess is payable by the year or by instalments, has remained [2]vacant and unproductive of rent throughout the year, or throughout the period in respect of which any such instalment is payable, the municipality shall remit or [3]refund not less than two-thirds of the amount of the rate, or of the cess or instalment of the cess, as the case may be :

[1]Remission of tax in case of vacancies; when obligatory;

[4]provided that no such remission shall be granted unless notice in writing of the fact of the building or land being vacant or unproductive of rent has been given to the municipality, and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

[5]when discretional.

(2) When any such building or land as aforesaid

(*a*) has been vacant and unproductive of rent for any period of not less than sixty consecutive days, or

(*b*) consists of separate tenements one or more of which has or have been vacant and unproductive of rent for any such period as aforesaid, or

(*c*) is wholly or in great part demolished or destroyed by fire or otherwise deprived of value,

the municipality may remit or refund such portion, if any, of the rate or instalment as they may think equitable.

Burden of proof on claimant.

(3) The burden of proving the facts entitling any person to claim relief under this section shall be upon him.

Explanatory clause.

[6](4) For the purposes of this section a building or land shall be deemed to be productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

1 **Origin or section.**—This is taken from sec. 62 of the Panjab Act, with some alterations. Under sec. 46 (*j*), rules may be made prescribing the conditions on which sums due on account of tax may be written off as irrecoverable.

2 '**Vacant.**'—This has throughout this section been substituted for "unoccupied", with the intention of covering more clearly cases in which an owner or occupier is absent, but leaves his house furnished or ready for occupation. (See clause 4).

3 **Refund.**—The word "*refund*" has been inserted because most taxes are taken in advance, and any repayment of such would not be a remission, but a refund.

Amount to be refunded.—Instead of a remission of the *whole* rate, &c., as in the Panjab Act, the municipality is now bound to remit "not less than ⅔rds." It was pointed out that in most places entire remission would work severe and unjust loss to the municipality, for municipal expenditure on street lighting, water-supply, for the fire Brigade, &c., goes on all the same, whether a house is occupied or not; and occupants benefit from all the general advancement of the town consequent on municipal expenditure and the spread of education. The total remission may be justifiable and necessary in some cases and not in others, and at certain times, but not always. A rigid rule for all cases and all municipalities was therefore undesirable, while at the same time, it was not advisable to leave the discretion of a municipality quite unfettered, as to whether any or all should be remitted. It is one of the essentials of all taxation that it should be certain.

By the Bombay City Act, the refund is obligatory for vacancies of not less than 60 consecutive days, and the amount is to be ⅔rds of the tax, if any, paid for the number of days such vacancy lasted.

The Madras Act similarly makes the refund obligatory for not less than 60 consecutive days "*in the half-year*," and the amount is "so much not exceeding ½ of the tax paid for that half-year as is proportionate to the number of days during which such building has been vacant."

The Bombay City Act requires that if the vacancy extends to the next ½ year, notice should be given within 30 days of the commencement of that next ½ year to entitle to refund.

4 **Notice of vacancy to be given.**—This proviso has been slightly modified on the lines of sec. 176 of the Bom. City Act. The Panjab section reads that the notice is to be "of the circumstance under which it (the refund) is claimed" and it has to be given "within the first month of the period in respect of which it is so claimed."

The terms of this sub-sec. (1) are emphatic "no such remission shall be granted." As this would in some cases work a hardship where in certain circumstances the tax for the year having been paid, notice is omitted to be given either by mistake or through the party being unable or incapable of giving it through absence, or death or otherwise, the following sub-section empowers a municipality to exercise a discretion in certain cases.

The Madras Act provides that "no person *shall be entitled* to such refund, unless he at or about the time the building became vacant, gives notice of that vacancy."

The Bom. City Act provides that "no refund *shall be claimable*, unless notice in writing of the vacancy shall have been given." The time for giving the notice is not prescribed, but "no refund shall be paid for any period previous to the day of delivery of such notice." The

words italicised in the quotation from this Act apparently show that though the refund cannot be claimed as a right unless notice be given, there is nothing to prevent the municipality in exercising its discretion in fit cases.

When refund to be claimed?—This Act does not fix any period within which the application for the refund must be made. Under the Madras Act it must be made "not later than during the ½ year for which the refund is sought or the following ½ year." Under the Bom. City Act, the Commissioner may disallow any claim, unless the application is made "within 30 days after the expiry of the ½ year to which the claim relates."

5 **Remission when discretional.**—This sub-section gives a very wide discretion to a municipality which may, in the cases stated, remit even the whole of the rate and for any length of period, provided it is "not less than 60 consecutive days." No previous notice of vacancy is required as the proviso to sub-section (1) does not apply to this sub-section.

6 **Meaning of productive of rent.**—The Panjab Act, section 62, contains this additional clause which has here been omitted:—

"For the purposes of this section, neither the presence of a care taker, nor the mere retention in an otherwise unoccupied dwelling house of the furniture habitually used in it, shall constitute occupation of the house."

If the house is not let to a tenant, but is reserved by the owner for his own occupation, would it be productive of rent within the meaning of this sub-section? Apparently not, though the principle of the two cases is the same. The owner here stands in the position of a tenant with a continuing right of occupation.

"Lush, J., says: (*R. v. St. Paucras*, 2 Q. B. D. 581). 'The owner of a vacant house is in possession and may maintain trespass against any one who invades it: but so long as he leaves it vacant, he is not rateable for it as an occupier, if, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier, though he may not reside in it one day in the year:—If the owner did not keep the furniture in the house, he would have to keep it somewhere else, and he may therefore be regarded as making use of the house at least as a warehouse for the furniture. Slight as such user may be, it is enough when added to legal possession to constitute occupation.

"In *Staley* v. *Castleton* (33 L. J. M. C. 178; 5 B. and S. 505), the owner of a cotton mill, which, through a temporary scarcity, of cotton, was not kept at work, was held to be in rateable occupation on the ground that he was using the mill as a warehouse for the machinery that was in it. In such cases the amount of the assessment should of course, be calculated with reference to the nature of the occupation. A building found to be occupied as a warehouse should be assessed at its value as a warehouse, and not at what its value would be if used as a dwelling house or for any other purpose." (*Rosher on Rating*, 60.)

(3) Power to charge Fees.

70. (1) When any [2]license is granted by the municipality under this Act, or when [3]permission is given by them for making any temporary erection or for putting up any projection, or for the temporary occupation of any public street or other land vested in the municipality, the municipality may charge a [4]fee for such license or permission.

[1]Municipality may charge fees for certain licenses.

(2) The municipality may also charge such fees as may be fixed by by-laws under clause (*a*) of sub-section (1) of section 48 for the use of any such places mentioned in that sub-section, as belong to the municipality.

[1]Market and other fees.

1 **Origin of section.**—Sub-sec. (1) is sec. 22 of the old Act of 1873, re-enacted, with the exception of the word 'public' added to 'street' in consequence of the changed definition.

To the marginal note should be added the words "and permissions."

By sec. 73 Government have power to suspend or prohibit the levy of any objectionable fee and may direct imposition of fees.

Fees for quarrying on municipal land may be charged, but not under the Act.—"2. Quarries do not vest in municipalities under section 17 of the Principle Act otherwise than by virtue of such assignments or transfer of rights in or over or appertaining thereto as Government may under No. 12 of the rules under the Bombay Land Revenue Code, 1879, be pleased to sanction, in which case the transfer or exercise of right will be made, subject to such conditions as Government shall think fit in each case to prescribe, and occupancies may be granted to Municipalities and Local Fund Committees on the same terms as are applicable to such grants to other persons.

Such transfer would confer a right in or over or appertaining to the land, but not a right to impose taxes or fees recoverable by summary proceedings.

4. If Government see fit to confer on municipalities rights in, over or appertaining to quarries, subject to the rights expressly or implicitly conferred on others in the rules under the Bombay Land Revenue Code, 1879, and subject to such conditions as to the terms on which each municipality shall admit others to the use of such quarries, then such municipalities will hold the proceeds of such quarries as part of the Municipal Fund and be at liberty to realise those proceeds as they might the rent from any other property for which no specific provision as to recovery exists, but not by summary proceedings in a Criminal Court.

5. The levy of fees prescribed by rules under the Acts would be *ultra vires*, but municipalities can, subject to such conditions as Government think fit in each case to prescribe, exercise the right, if conferred by Government, of charging for the use of the quarries, provided they do not attempt to recover such charges as fees by summary proceedings under section 84 of Act VI of 1873."

Municipalities are not entitled to levy fees from the public for quarrying in assessed lands within municipal limits. (G. R. 4225 of 30 Nov. 1888, Gen. Dep.) See note sec. 50.

Municipalities may quarry stone in reserved forests, free of charge, provided the permission of the District Forest Officer is first obtained in each instance. (G. R. 6139 of 6 Sept. 1882, Rev. Dep., G. R. 290-A-465 of 12 Sept. 1882, P. W. D.)

Quarrying fees—Municipalities cannot be authorised to levy under the Act—Government Notification No. 543 (*vide* B. G. G. of 13 Nov. 1883 p. 897) permitted the Cantonment Committee of Hyderabad to levy fees for the quarrying of stone, gravel and kankar within its limits. The Local Board of Hyderabad wanted to take gravel free from a pit in cantonment limits for repairing local board roads round about Hyderabad but the Cantonment Committee claimed fees. The concensus of opinion was that the grant of right to levy fees should be subject to all rights and exemptions reserved to individuals and local bodies under rule 41 of the Land Revenue Code.

The Remembrancer of Legal Affairs says "There is no power given to municipalities to levy fees for quarries within municipal limits which are the property of the State. *Expressio uniusest exclusio alterius.*

4. The State can, of course, assign to any individual or body, any of its property, such as realised items of revenue, but for the delegation of its powers and the correlative duties, legislation is necessary.

I think therefore that the executive Government could not empower municipalities or other public bodies to exercise its powers for the collection of land revenue or other charges, except under the authority of such an enactment as sec. 21 of Bombay Act VI of 1873, which contemplates taxation only and not the recovery of charges for the use of property vested in His Majesty.

6. Fees for quarrying are not taxes, but charges of the nature of rent for State property and it would be as *ultra vires* and irregular to sanction under section 21 of Bombay Act VI of 1873, the recovery of such fees as taxation, as it would be to sanction under that section the direct recovery by municipalities of rent for buildings vested in them.

No notification under section 17 (1) (*a*) of the Cantonments Act (XIII of 1889), could impose such a tax, and the notifications for this purpose, purporting to authorise the levy of such fees in the Cantonments of Hyderabad and Kirkee, are so far *ultra vires*.

9. For the recovery of any fees and charges, which a Municipality or Cantonment may desire to charge in respect of land vested in such body, the ordinary remedies, which would be open to any private proprietor, must be sought; and section 84 of Bombay Act VI of 1873 would be inapplicable, and consequently section 17 (2) of the Cantonments Act, 1889, would not authorise a rule for the recovery of such fees.

10 In respect of quarries vesting in His Majesty, Government can, it is submitted, assign the revenues when realised, but cannot divest itself of its powers and responsibilities with regard to the regulation of all questions connected with the revenue which Government alone can levy.

Resolution.—Municipalities and other bodies levying quarrying fees within their respective limits should modify their rules regarding the levy of the fees so as to recognise all exemptions allowed by Government. If any objection is raised, it should be explained that while Government have no wish to interfere with their arrangements for realising the revenue from quarries, &c., within their limits, it is, from the strictly legal point of view, merely the revenue, which, failing the assignment, Government would themselves have realised, that is assigned to those bodies, and not a general right to tax the use of the quarries at their discretion. Collectors concerned should supply those bodies with statements of the exemptions allowed by Government in regard to quarrying fees levied outside municipal or cantonment limits in the same district." (G. R. 2743 of 19 April 1894, Rev. Dep.)

Gov. of India Res. No. 13—63—2—F of 12 July 1897 quoted G. R. 5792 of 3 Aug. 1897, Rev. Dep., having ruled that the Forest Dep. should charge Gov. Departments and contractors for extracting mineral products from forest land, and that contractors and Gov. Departments are similarly to be charged for mineral products extracted from waste land, at the disposal of Government, G. R. 1948 of 17 March 1898, R. Dep., on the question whether local bodies could be permitted to levy fees from contractors and Government Departments for removing minerals, &c., from quarries within the control of such bodies, states, "The question referred to in the Gov. of India Res. affects Gov. forests and waste lands generally whether under the Forest Dep. or managed by civil officers. Lands vested in a local body or even handed over to it for administration stand on a different footing. In accordance with the orders passed in 1894, the Poona Municipality should allow all exemptions and privileges which Gov. allow. As no exemption is now allowed to contractors in the case of land administered by Gov., it is open to the municipality to discontinue such exemption, but it is not bound to do so."

Quarrying license or permission cannot be granted by municipalities under the Act.—"3. There is no provision in the Act for granting licenses or giving permission by a municipality to quarry stone.

5. Government can of course assign the revenue derivable from such sources to a municipality, but it is open to question whether they can delegate to Local Boards or municipalities the power to levy it without an express provision of law.

6. A municipality can of course impose any tax, toll or impost approved by Government but it would not appear to open to such bodies to issue, at discretion, licenses on payment of fees for the exercise of particular trades or industries or for the use of State property, except under powers expressly conferred by the Legislature, as for instance by sec. 22 of Bombay VI of 1873, and sec. 33 of Bombay II of 1884.

9. The regulation and licensing of blasting, however, seems to have been regarded by the Legislature as the appropriate province of the Magistrate of the District (Bombay District Police Act, 1890, sec. 40.)

12. If Government approve of the imposition of any form of tax, toll or impost in respect of stone from quarries, the restrictions on the industry should be eliminated from the municipal Rules and Bye-laws.

13. A tax on the stone brought into municipal limits would apparently be legal, but for reasons stated in my No. 1707* of 8 November 1890, it seems doubtful whether the individuals practising a particular trade or industry could be subjected to a tax of so much per head." (G. R. 1644 of 25 April 1892, Gen. Dep.)

*Circulated with G. R. No. 1889 of 7th March 1891. (Vide note 2, sec. 60 (a) (1), page 164.)

Agreements creating monopolies are void.—The municipality made a contract with plaintiff to grant him the exclusive right of selling fish within municipal limits for one year on his paying a certain amount on account of fees &c. The municipality having broken the contract in consequence of a dispute, plaintiff sued for damages. *Held* that agreements having for their object the creation of monopolies are void as opposed to public policy under the English Common Law and under sec. 23 of the Indian Contract Act.

The power conferred by sec. 191, clause 2 of Madras Act on the Chairman of a municipality to license places for selling meat, etc., only empowers him to consider the propriety of granting or withholding licenses in each case and not to enter into agreements which must preclude him from considering any such application except from a particular person or persons.

A power to interfere with the ordinary rights of citizens will not be inferred in the absence of express grant unless it be necessarily implied as incidental to other powers expressly granted or is indispensable to repress the mischief contemplated and advance the remedy given. *Rossi* v. *Edinburgh Corporation*, (L. R., (1905), A. C., 21) referred to. *Logan* v. *Pyne*, (43 Iowa, 524; 22 Am. Rep; 261, 262) followed.

Doubts as to the existence of such powers must be resolved against the Corporation and in favour of the public.

Refund of monies received under void agreement.—Where a municipal body receives license fees under a void agreement, it must, when the agreement is set aside, refund the amount so received; and a suit to recover such amount will not be barred by sec. 62 (2) of the Act.

Discretionary power to grant licenses conferred by sec. 191, (2) of the Act, does not empower municipalities to refuse licenceses unless clear grounds exist for so refusing. (*Somu Pillai* v. *The Municipal Council, Mayavaram*, I. L. R. (1905) 28 Mad. 520.)

Power to grant or refuse license discretional-circumstances under which the Civil Court will interfere.—The power to grant or refuse a license is purely discretional and the only limit to its exercise is that it should not be arbitary, vague and fanciful, but it must be legal and regular unless it is clear beyond doubt that the municipality is using its power with some indirect motive and for a collateral purpose, not for the purpose for which the Legislature has given the power, a Civil Court will not interfere. In the words of Lord Bramwell in *Sharp* v. *Wakefield* (L. R. 1891 A. C. 173, page 183) "the hardship of stopping the trade of a man who is getting an honest living in a lawful trade, and has done so, perhaps, for years, with probably an expense at the outset, may well be taken into consideration, but it must be done so in conjunction with considerations the other way and must be left to the discretion of the Justices." (*Haji Esmail* v. *Municipal Commissioner of Bombay*, I. L. R. (1903) 28 Bom. 253; (1903) 5 Bom. L. R. 1001.)

Monopoly of service at burning ground illegal.—The Bengal Act sec. 259 authorises a municipality to provide fitting places to be used as burning grounds, and the imposition of a fee not exceeding Rs. 2 in respect of every corpse burnt therein. Sec. 260-A authorises the grant of licenses for sale of fuel at the burning grounds and other articles used for cremations. The municipality has no power whatever to authorise the licensee or any person to provide for the services of cremation priests, much less have they power to create an exclusive right in any person for this purpose. Sec. 260-A was never intended to be so applied as to enable the municipality to create a monopoly in favour of any person, even in respect of fuel shops and there is no conceivable reason why more than one person should not be granted licenses to keep such shops. (*Gour Moni Debi* v. *Chairman Panipali Municipality*, (1910) 14 C. W. N. 1057, 12 C. L. J. 75; 6 Ind. Cas. 864.)

2 **Licenses.**—These are granted under sections 48 (*q*), (*t*), 123, 139, 140, 141, and 151.

By-laws requiring licenses in cases in which the Act, by specifying the cases in which they shall be required, has impliedly declared that they shall not, are in violation of the Act. (8 Mad. H. C. App. 3.)

The mere fact that the Act (sec. 412 C Ben. Act II of 1888) provides for regulations with respect to the recovery of expenses incurred by the municipality in the removal of any rubbish and offensive matters belonging to a person in the carrying on of his trade, did not authorise the making of a by-law creating an obligation to take out a permit and to pay a fee. As the Act does not provide for such a permit the by-law would be *ultra vires*. (I. L. R. 20 Cal. 605, *Corporation of Calcutta* v. *Gadul Dooley*.)

Double license fee.—When a place is used for more purposes than one, mentioned in sec. 322 Madras City Act, charging a license fee equal to the total of the fees, which would be leviable if a separate license were taken for the use of a separate place for each of the said purposes, is not *ultra vires*, provided that it is levied with the approval of the corporation and the sanction of Government. (*Nyna Mahomed* v. *Llyod, Pres. Corp. of Madras*, 8 M. L. I. 373; 1910, 8 Ind.Cas. 574. 2 other W. N. 71.)

3 **Permissions.**—These are given under sections 113, 122 (4), and 125 (1).

By sec. 48 (1) (*n*) by-laws are to be made "regulating the conditions on which permissions may be given."

Sec. 155 provides for a penalty in case of failure "to comply with the conditions subject to which any permission was given" by the municipality.

4 **Fee.**—See definition, sec. 3 (14).

These fees are to be prescribed by *rules* under sec. 46 (*i*) which *shall* be made by the municipality.

5. **Market and other fees.**—"*Any such places.*"—Does this include municipal markets and slaughter houses in addition to "all places used by or for animals which are for sale or hire or the produce of which is sold"? See note to sec. 140.

A municipality levied fees on animals brought for sale and sold at two fairs which occurred within a fortnight of each other. The municipality could not afford to build any special accommodation for the very large number of animals brought, without charging fees that would be prohibitive, nor did it provide any special facilities for the sale of the animals

It proposed to increase these fees and then the question arose whether in view of G. R. 1076 of 4 April 1887, Gen. Dep., these fees were objectionable.

The new provisions of this Act enable an answer to be given in the negative, but the following remarks of the Legal Remembrancer (vide G. R. 654 of 10 February 1896, Gen. Dep)., are instructive.

"4. Fees, unlike taxes, do not require to be published for objections (except so far as they may be required to be prescribed by by-laws which have to be published for objections, vide sec. 48 (2) because they are chargeable only in consideration of some benefit to be received, of which a person unwilling to pay could decline to avail himself.

"5. Such benefit might be enjoyed by non-residents, and there is therefore nothing to indicate any intention on the part of the Legislature to restrict the power of municipalities to charge the persons seeking such benefit whether they be residents or not.

"6. If the municipality give permission for the temporary occupation of land vested in them, by cattle brought for sale, it would certainly not be illegal to charge, under sections 22 and 32 (*h*) (now sec. 46 (*i*) and 70), the persons owning or bringing such cattle fees for such permission, and it is not absolutely necessary that markets or slaughter-houses should have been erected for the purpose, as would be necessary if stallage fees were to be charged under section 67. (Now sec. 140.)

"10. But if the municipality places at the disposal of non-residents land vested in the municipality, the Legislature seems to have deemed it not unreasonable that fees should be chargeable which would *pro tanto* relieve the inhabitants of fiscal burdens in return for the use of such municipal property.

"If the municipality affords no such advantage to non-residents, it was apparently intended that it should reap no revenue from them; and thus, though non-residents may be charged fees, they are not liable to *taxes* imposed irrespective of benefits conferred.

"11. It is submitted that while taxes on the sale of animals might operate as transit duties, fees for the use and occupation of land could hardly be regarded as open to that objection.

"13. Whether enhanced fees should now be charged would seem to be a question which perhaps may best be solved by considering the value of the advantage sellers derive from the permission granted to occupy municipal land; and as to this, the municipality and the sellers between them, may possibly be able to arrive at a fair and reasonable conclusion."

(*4*).—*Special Provisions relating to certain Taxes.*

71. (1) The municipality may, instead of imposing a water-rate, or in individual cases, of levying a rate imposed in respect of the supply of water belonging to the municipality to, or for use in connection with, any private lands or buildings,

[1]Fixed charges and agreements for payment in lieu of taxes for water supplied.

(*a*) fix at rates not exceeding such as shall be specified in the rules in force under section 46, charges for such supply according to the quantity used, as ascertained by measurement,

(*b*) arrange with any person, on his application, to supply on payment, periodical or otherwise, water belonging to the municipality in such quantities or for such purposes, whether domestic, ornamental, or irrigational or for trade, manufacture or otherwise, on such terms and subject to such conditions as they shall fix by agreement with such person :

provided that—

(*a*) the meters, connection-pipes and all other works necessary for and incidental to such supplies, and all future repairs,

extensions and alterations of such works shall be under the control of the municipality, and the expense thereof shall, so far as is not inconsistent with the rules or by-laws of the municipality, be defrayed by the persons liable in respect of such supplies, and

(*b*) all such supplies of water shall be, and shall be deemed to have been granted, subject to all such conditions as to the limit or stoppage thereof, and as to the prevention of waste or misuse, as are prescribed in the by-laws for the time being in force under section 48.

[2]Power to fix a special rate in lieu of special sanitary cess.

(2) When the municipality have made provision for the cleansing of any factory, hotel, club or group of buildings or lands used for any one purpose and under one management, they may, instead of levying in respect thereof any special sanitary cess imposed under this chapter, fix a special rate, and the dates and other conditions for periodical payments thereof, which shall be determined either,

(i) in accordance with the rules for the time being in force under section 46 or

(ii) by written agreement with the person who would have been otherwise liable for the cess, provided that, in fixing the amount, proper regard be had to the probable cost to the municipality of the service to be rendered.

[3]Power to compound tax on vehicals or animals.

(3) When the municipality have imposed a tax on vehicles or animals kept for use within the municipal district, they may compound with the keeper of any livery stable or of horses or vehicles kept for sale and hire, for the payment of a lump sum, for any period not exceeding one year at a time, in lieu of any amount which such keeper would otherwise have been liable to pay on account of the tax imposed as aforesaid.

[4]Recovery of sums claimed under this section.

(4) Every sum claimed by the municipality as due under sub-section (1) as a charge fixed by agreement or otherwise on account of water-supply, or as expenses to be defrayed such as are referred to in that sub-section, or as a special rate under sub-section (2) or as a lump sum payable under sub-section (3), shall for the purposes of Chapter VIII be deemed to be, and shall be recoverable in the same manner as, an amount claimed on account of any tax recoverable under the said chapter:

provided that nothing in this section shall affect the right or powers of the municipality to contract with any person to supply for use beyond the limits of the municipal district, at such rates and on such conditions as the municipality may think fit, any quantity of water belonging to the municipality but not required for the purposes of this Act.

1 **Origin of section.**— This section now gives the municipality a free hand to compound for certain taxes. Clause (*a*) follows the Bom. City Act, sec. 169 (1) (*a*); and clause (*b*) and clause (*a*) of the proviso are taken partly from the Madras Act, sec. 147, clause (4) of which defines what are domestic purposes. This also follows the Bom. City Act, sec. 169 (1) (*b*).

See the Water Rate rules framed under the old Act and published with G. R. 4106 of 8 Aug. 1900, Gen. Dep. The Legal Remembrancer in amending them remarks:—

"5. The rules are a statement of the terms on which the municipality will give a certain *quid pro quo*, and therefore are open to no objection, for the rates are not to be imposed, and if the public object, they need not take the water or incur the liability. Thus Government are not called on to interpose on behalf of the inhabitants as tax-payers, and the only question is one of wise municipal administration. Such arrangements, it is submitted, are within the discretion of the municipality. If their charges be too high, there will be few consumers; if the charges be too low, the municipality will discover their mistake by financial results, and will presumably modify their system from time to time as experience dictates.

"6. As to the proviso to rule II (*e*), it may be open to question whether Government would desire a municipality to make exceptional provisions for religious purposes. A municipality has of course nothing to do with the recognition of religious claims and is not entitled to forego, in favour of such purposes, advantages claimable on account of the fund.

"10. The rule II (*m*) would be utterly *ultra vires* and ineffectual, except as forming a part of a contract, which it is perfectly open to any one to reject altogether if he object to the terms. At the same time, Government may possibly think that the municipality are pushing their advantage indiscreetly and unnecessarily far in forcing consumers (if they want to get private water supply at all) to give up all right of claim, whatever may be the ground of discontinuance of supply. The terms on which Government supply is given are far more liberal, *vide* section 28 of the Bombay Irrigation Act, 1879, which might suggest an equitable model for the municipality to follow.

"12. The above rules *mutatis mutandis* might afford a fairly suitable model for the purpose of declaring the contractual basis on which municipalities may be willing to offer private supply of water. But the conditions of the bargain may vary in different municipalities, and even in the same district, from time to time, though of course no rescission of a contract and no retroactive modification of the terms proposed could be validated by any rules whatsoever. But it is submitted with the utmost deference that contractual arrangements of this nature should be considered by the legal advisers of each municipality, and that those bodies should not be encouraged to look to Government for gratuitous legal advise in such matters."

Clause (*b*) proviso follows the provisions of the Madras Act, sections 148, 149, 149-A.

2 **Special rate for special sanitary cess.**—This is on the lines of sec. 172 of the Bom. City Act.

3 **Compounding tax on vehicles and animals.**—The Madras Act, sec. 29, is very similar to this. Also the Bom. City Act, sec. 185 of which includes "bullocks for hire."

Tolls not compoundable.—It was proposed to add after the words "under sec. 71" in sec. 46 (*i*) the words "or of any toll" a corresponding amendment being made in this clause, as it had been observed that outside the borders of most municipalities were to be found householders who kept vehicles and were constantly going in and out of the town. It was a reasonable and convenient practice to allow such persons to compound for tolls. This suggestion was however not adopted.

Sec. 91 (2) of the Madras Act allows compounding of tolls. So also the Panjab Act, sec. 42 (1) (B) proviso.

Sec. 173 of the Bom. City Act provides that the water or halalkhor tax paid by any person may be recovered by him from the occupier of the premises for which it is paid.

72. If any tax imposed under this Act is a tax on pilgrims resorting periodically to a shrine [2]within the limits of a municipal district, the Commissioner may require the municipality of such district to assign and pay to the district local board, or to the taluka local board having authority in the taluka in which such municipal district is situate, or partly to the said district local board and partly to the said taluka local board, such portion of the total collections on account of such tax as he shall deem fit; and the portion so assigned shall be expended by the said board or boards within the areas respectively under their authority, on works conducive to the health, convenience and safety of the said pilgrims.

[1]Taxes on pilgrims may be assigned in part to local boards.

1 **Taxes on pilgrims.**—This is a re-enactment of clause 5 of sec. 21 of the old Act of 1873.

It had been brought to the notice of Government that the taxes levied by municipalities on pilgrims, owing to the greatness of the number of pilgrims, generally yielded large revenues which were in some instances out of proportion to local requirements of the small Municipal Districts in which they were levied. Such taxes were, it is true, generally expended by the municipalities on buildings and other works and arrangements for the convenience and health of the pilgrims, but these municipalities had no authority beyond the limits of the Municipal Districts in which they were respectively established, whilst the money realised from pilgrims might often be perhaps even more usefully expended in their cause in erecting dharamshalas and maintaining and improving the roads and on other similar purposes, outside of such districts, but in their neighbourhood, than within them. This provision was therefore made in the Act of 1884, to empower Government, whenever they thought fit, to require such municipalities to assign a portion of the pilgrim tax to the District or taluka local board having authority in the neighbourhood for expenditure by such board on objects of the kind abovementioned.

If such shrine is without the limits of a permanent municipality, under sec. 6, such place may be formed into a periodical Municipal District.

73. If it shall at any time appear to the Governor in Council, on complaint made or otherwise, that any tax, [2]leviable by a municipality, is unfair in its incidence, or that the levy thereof, or of any part thereof, is obnoxious to the interests of the general public, he may require the said municipality, within such period as he shall fix in this behalf, to take measures for removing any objection which appears to him to exist to the said tax, and if, within the period so fixed, such requirement shall not be carried into effect to the satisfaction of the Governor in Council, he may, by notification in the *Bombay Government Gazette*, suspend the levy of such tax, or of such part thereof, until such time as the objection thereto shall be removed.

[1]Power of Government to suspend levy of objectionable taxes.

The Governor in Council may at any time, by a like notification, rescind any such suspension.

1 **Suspension of tax.**—This is a re-enactment of sec. 41 of the old Act. The Panjab Act, sec. 48, contains identical provisions.

Though much objection was raised to the provisions of this section when introduced into the old Act of 1884, it was considered advisable to maintain it in its present modified

form. It was observed that the taxes are prescribed on the joint authority of the municipality and the Governor in Council whose previous sanction is necessary. It is impossible always to foresee, at the time of giving sanction, every thing which may result from the imposition of the tax sanctioned, or the method of assessing and levying it, and it is unreasonable that the Governor in Council, when the sanction is once given should be bound to perpetuate it and unable to withdraw it, although the municipality may be levying the tax in a way to cause popular discontent or injury to public interests, and may turn a deaf-ear to the remonstrances of Government.

In the North-West Provinces and Oudh Municipalities Act of 1883, sec. 44, it is enacted that "the Local Government, with the previous sanction of the Governor-General in Council, may *abolish* or reduce any tax imposed under the foregoing sections."

[1]Power of Government to require municipalities to impose taxes.

74. Whenever it appears to the [2]Governor in Council that the balance of the municipal fund of any municipality is insufficient for meeting the expenditure incurred under section 175 or for the performance of any duties in respect of which they shall have been declared under section 178 to have committed default, the Governor in Council may by notification require the municipality to impose, within the municipal district, any such tax specified in the notification as may be imposed under section 59 if no such tax is at the time imposed therein, or to enhance any existing tax in such manner or to such extent as the Governor in Council considers fit, and the municipality shall forthwith proceed to impose or enhance in accordance with the requisition such tax under the provisions of this chapter, as if a resolution of the municipality had been passed for the purpose under section 60:

provided that—

(*a*) the Governor in Council shall take into consideration any objection which the municipality or any inhabitant of the municipal district may make against the imposition or enhancement of such tax,

(*b*) it shall not be lawful for the municipality to abandon or modify or to abolish such tax when imposed, and

(*c*) the Governor in Council may at any time cancel or modify any requisition made by him under this section, and the levy of the tax or the enhancement except as to arrears theretofore accrued due, shall thereupon cease or be modified accordingly.

1 **Imposition of taxes.**—The power now given to Government for intervention is restricted to the 2 cases, *viz.*, cases of emergency under sec. 175, and default under 178. The power to intervene when a tax has been suspended as objectionable under sec. 73 was struck out of the Bill. This can be done indirectly through sec. 178.

Under sec. 49 of the Madras Act, Government have power to direct a municipality to levy *any tax* lawfully leviable under the Act, unless the municipality can show cause to the contrary.

2 **Governor-in-Council.**—Throughout the section, means in Sind, the Commissioner in Sind (sec. 3 (3) note.)

(5).—*Octroi and Tolls.*

Octroi by-laws to be submitted with proposal for imposition of octroi.

75. Every municipality, when submitting for sanction a proposal for the imposition of octroi, shall submit therewith for sanction a draft of by-laws for the purposes of clause (*j*) of section 48, after observing the requirements of sub-sections (2) and (3) of that section.

Octroi by-laws.—It was suggested that the Act should lay down how the municipality is to proceed in respect of articles liable to octroi duty brought by rail into the municipal district and kept within the limits of the railway department, as the railway officials often throw difficulties in the way of the municipalities. Their officers are not allowed to exercise their functions within railway limits, and there is no doubt that in consequence they lose considerably, and railway employes escape taxation to which they in common with the rest of the public are liable.

On the continent of Europe, where octroi is almost universally levied by municipalities, the octroi officers are, as most travellers have noticed, permitted to take their stand on the railway premises inside the door through which incoming passengers leave the station and examine their luggage, baskets, &c., there.

These proposals were, however, not embodied in the Act.

The Panjab Act, sec. 69, gives power to lease the collection of octroi or tolls. See Part II, Appendix K. for "Principles of octroi taxation."

[1]Power to examine articles liable to octroi.

76. (1) Every person bringing into, or receiving from beyond, the octroi limits of a municipal district, any articles on which octroi is payable shall, when required by an officer authorised in this behalf by the municipality, and so far as may be necessary for ascertaining the amount of tax chargeable,

(*a*) permit that officer to inspect, examine and weigh and otherwise deal with the article; and

(*b*) communicate to that officer any information, and exhibit to him any bill, invoice or document of a like nature, which he may possess relating to the article.

[1]Power to search where octroi is leviable.

(2) If any person bringing into, or receiving from beyond, the octroi limits of a municipal district in which octroi is leviable, any conveyance or package, shall refuse on the demand of an officer authorised by the municipality in this behalf, to permit the officer to inspect the contents of the conveyance or package for the purpose of ascertaining whether it contains any articles in respect of which octroi is payable, the officer may cause the conveyance or package to be taken without unnecessary delay before a Magistrate or such officer of the municipality as the [3]Governor in Council appoints in this behalf by name or office, who shall cause the inspection to be made in his presence.

1 **Inspection of articles.**—This is taken from the Panjab Municipal Act; sub-sec. (1), from sec. 65, and sub-sec. (2) from sec. 66.

A person who imports timber by sea into a municipal district is not bound by the enteries in shipping bills and manifests as to its weight for the purposes of calculating the octroi duty, but is entitled if he disputes the said entries to demand a fresh weighment or measurement at the place of importation. (*Queen Empress* v. *Ramchandra*, Un. C. C. 541, Bom. H. C. Cr., 15 of 1891.)

2 **Power of search.**—This refusal may amount to an offence punishable under sec. 77 (2).

It would also be punishable under sec. 186, Indian Penal Code.

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

[1]Presentation of bills for octroi.

77. (1) Every officer demanding octori by the authority of the municipality shall tender to every person introducing or receiving any article on which the tax is claimed, a bill specifying the article taxable, the amount claimed, and the rate at which the tax is calculated.

Penalty for evasion of octroi.

(2) If goods passing into a municipal district are liable to the payment of octroi, then every person who, with the intention to defraud the municipality causes or abets the introduction of, or himself introduces or attempts to introduce within the octroi limits of the said district, any such goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall be punishable with fine which may extend to ten times the value of such octroi or to fifty rupees, whichever may be greater.

1. **Bills for octroi.**—This section is taken from the Panjab Municipal Act; sub-sec. (1), from sec. 67, and sub-sec. (2) from sec. 70.

"*With the intention to defraud.*"—These words will make the section almost unworkable. The onus should lie on the person trying to evade the tax, of proving absence of such intention.

Tables of Tolls to be shown on demand.

78. Every municipality imposing any toll under this Act, shall cause to be kept at each place where such toll is to be collected, a table in the vernacular language of the district, showing the amounts leviable in all cases provided for in the rules, including the terms, if any, on which the liability to pay such tolls may be compounded by periodical payments, and it shall be the duty of every person authorised to demand payment of a toll, to show such table, on the request of any person on whom such demand is made.

[1]Power to seize vehicle or animal on non-payment of octroi or toll.

79. (1) In the case of non-payment on demand of any octroi or of any toll leviable by a municipality, the person appointed to collect such octroi or toll may seize any article on which the octroi is chargeable or any vehicle or animal on which the toll is chargeable, or any parts of its burden, which is of sufficient value to satisfy the demand, and may detain the same. He shall thereupon give the person in possession of the vehicle, animal, or article seized, a list of the property together with a written notice in the Form of Schedule D. that the said property will be sold as shall be specified in such notice.

(2) When any article seized is subject to speedy and natural decay, or when the expense of keeping it together with the amount of the octroi or toll chargeable is likely to exceed its value, the person seizing such article may inform the person in whose possession it was that it will be sold at once, and shall sell it or cause it to be sold accordingly, unless the amount of octroi or toll demanded be forthwith paid.

Power to sell property seized at once.

(3) If at any time before the sale has begun, the person whose property has been so seized, tenders at the municipal office the amount of all expenses incurred, and of the octroi or toll payable, the municipality shall forthwith release the property seized.

[2]Release of property on payment.

(4) If no such tender is made, the property may be sold, and the proceeds of such sale shall be applied in payment of such octroi or toll and the expenses incidental to the seizure, detention and sale.

[3]Sale.

(5) The surplus, if any, of the sale-proceeds shall be credited to the municipal fund, and may, on application made to the municipality in writing within six months next after the sale, be paid to the person in whose possession the property was when seized, and, if no such application is made, shall be the property of the municipality.

Surplus how dealt with.

1 **Origin of section.**—Compare this section with the Bom. City Act, sec. 214.

The first part of sub sec. (1) is taken from the Panjab Municipal Act, 1891, sec. 68 (1), which follows the Madras Act of 1884, sec. 95 (1), which however, provides that the vehicle or animal is to be seized only if the appurtenances or load does not suffice to defray the amount due. In the Bill, this section was worded according to the Madras Act, but the Special Committee considered that the vehicle should not be subject to seizure, if the toll is paid, and merely because the other duties on some of the contents are not paid, and therefore approved of the wording of the Panjab Act. See Bengal Act III of 1884, sec. 163.

2 **Sub-sec. (3).**—This is taken from sec. 96 (1) of the Madras Act, which however, fixes the expenses incurred in connection with the seizure and detention at "a sum of 4 annas." The clause follows, in this respect, the Panjab Act, sec. 68 (2), which places no limit on the expenses.

3 **Sub-sec. (4).**—This is taken from sec. 96 (2) of the Madras Act, which however, provides that besides the tolls or octroi due, and "sum of 8 annas on account of expenses," "such penalty not exceeding the amount of toll as the Chairman may direct," are to be paid out of the proceeds of the sale.

80. The municipality, if they think fit, instead of requiring payment of octroi, due from any mercantile firm or public body, to be made at the time when the articles in respect of which it is leviable are introduced within the octroi limits of the municipal district, may at any time direct that an account-current shall be kept on behalf of the municipality of the octroi so due from any such firm or body as the municipality specify in

Power to keep account-current with firm or public body in lieu of levying octroi on introduction of goods.

this behalf. Every such account shall be settled at intervals not exceeding one month, and such firm or public body shall make such deposit or furnish such security as the municipality or any committee or officer authorised by them in this behalf shall consider sufficient to cover the amount which may at any time be due from such firm or body in respect of such dues. Every amount so due at the expiry of any such interval shall, for the purposes of Chapter VIII, be deemed to be, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under the said chapter.

[1]Collection of octroi by one public body on behalf of others.

81. When any agreement such as is referred to in clause (*b*) of sec. 39 has been entered into, such one of the bodies entering into the agreement as by the terms thereof shall be specified in this behalf, shall have the same power to establish such octroi limits and octroi stations as that body may deem necessary, for the entire area in which the octroi is to be collected, and shall have the same power of collecting octroi on animals or goods or both brought within the limits so established, and the provisions of this Act relating to octroi shall apply in the same way, as if the limits so established were wholly comprised within the area subject to the control of the body by which they are so established, and the collections made and the costs thereby incurred shall, subject to the provisions of sec. 39, be divided between the funds respectively subject to the control of the bodies so entering into the agreement, in such proportions as shall have been determined in the said agreement.

Farming of tolls.

81-A. (1) It shall be lawful for the municipality to lease the levy of any toll that may be imposed under this Act by public auction or private contract:

provided that the lessee shall give security for the due fulfilment of the conditions of the lease.

Person employed by lessee of toll to have power of seizure.

(2) Where any toll has been leased under this section any person employed by the lessee to collect such toll shall, subject to the conditions of the lease, have the powers referred to in sub-sections (1) and (2) of section 79:

provided that no article distrained may be sold except under the orders of the municipality.

[1] **Origin of section**.—This was inserted by section 18 of the Amending Act of 1914, in order to legalise the farming of tolls, a practice which used formerly to exist and "which now many municipalities find absolutely necessary for financial results."

This is taken from the Tolls on Roads and Bridges Act Bom. III of 1875, sections 10—11, which provides that the period is from year to year or for longer period not exceeding 7 years. By section 213 of the Bombay City Act tolls may be farmed, but only for a year at a time.

This new section disposes of the question discussed in G. R. 1724 of 1 April 1909, G. D. so far only as tolls are concerned. The farming of *taxes* is still not permissible under the Act.

Farming of slaughter fees.—The municipality brought a suit to recover from defendant monthly instalments of a sum which defendant agreed to pay for the right of collecting the fees payable under s. 334 Madras City Municipal Act 1904, to the corporation, for licenses for slaughtering animals at a slaughter house.

Held that the corporation had no power under the Act to farm out the right of collecting slaughtering fees, therefore the contract was illegal and the suit is not lie. When a corporation has power to levy such fees, the power to farm them out does not pass as incidental to the grant. *Southampton Dock Co.* v. *Southampton Harbour and Pier Board*, L. R. 14 *e. g.* 595; 41 L. J. ch. 832; 26 L. T. 828; 20 W. R. 940 referred to.

If the corporation had such power, the fact that instead of granting a license signed by the President in the case of each animal admitted to the slaughter-house as required by sections 335 (1) and 426 (1), the animals are allowed to pass in and then for defendant to collect the fees from the owners of the animals, would not be such an illegality as to be an answer to the suit. (*Corparation of Madras* v. *Masthare Saib* 21 M. 4 J. 788; 1911, 11 Ind. Cas. 665.)

The municipality brought a suit to recover from defendant a balance due by him under a lease which he had taken of the right to collect fees on the slaughter of animals, which fees the council are entitled to levy under section 191 Mad. Dist. Municipalities Act (IV of 1884.)

Held that as farming out the right to collect the fees was not authorised by the Act, the lease was void. The powers of a statutory corporation must be strictly construed and what is not permitted must be taken to be forbidden. Therefore the fact that a municipality is expressly granted the power to farm out tolls, does not imply that it can also farm out the collection of slaughtering fees. 21 M. 4 J. 778 followed. 26 M. 156 referred to. (*The Municipal Council of Kumbakonam* v. *Abbahsabib*, 21 M. 4 T. 790; (1911) 2 M. W. N. 95; 10 M. 4 T. 168; 1911, 11 Ind. Cas. 669.) See also (1913) I. L. R. 36 Mad. 113 noted section 140.

Toll.—For definition see note 6, section 59.

Toll illegally collected by contractor.—A municipality is not liable to a 3rd person for toll illegally collected by the contractor from him, but it is liable in respect of a license-fee which had been collected by itself twice over. (*Srinivasa Chariar* v. *Kumbakonam Municipal Council* (1908) 18 Mad. L. J. 377.)

Previous sanction of Commissioner.—The Bill (No. I of 1914) contained a proviso making such sanction necessary in the case of each such lease, but the Select Committee struck it out as "it would lead to correspondence and delay."

Sums payable recoverable by application to Magistrate.—The Bill also contained a provision to this effect, but this also was deleted by the Select Committee "as the relations between the municipality and the lessee are contractual and should be left to the protection of the ordinary civil law in regard to the enforcement of contracts."

CHAPTER VIII.*—RECOVERY OF MUNICIPAL CLAIMS.

[1]Presentation of bill for taxes.

82. (1) When any amount,

(*a*) which, by or under any provisions of this Act, is declared to be recoverable in the manner provided by this chapter, or

(*b*) which, not being leviable under sub-section (1) of section 79, or payable on demand on account of an octroi or a toll, is claimable as an amount or instalment on account of any other tax which now is imposed or hereafter may be imposed in any municipal district,

shall have become due, the municipality shall, [2]with the least practicable delay, cause to be presented to the person liable for the payment thereof, a bill for the sum claimed as due.

Contents of bill.

(2) Every such bill shall specify—

(*a*) the period for which, and