Further action can be taken against prostitutes by the extension of sec. 204 of the Cantonment Code to a municipality. See Part III, "The Cantonments Act, 1889," and "The Cantonment Code, 1899."

The Bill contained provision for framing by-laws for "prohibiting any person being a common prostitute, from wandering or loitering in any public street or place of public resort, and their behaving in a riotous or indecent manner." This was, however, omitted from the Act.

The *marginal note* is wrong. The section refers to 'loitering' or 'importuning' which latter expression is much stronger than 'soliciting.' Mere solicitation would not appear to be punishable.

"*Loiter.*"—"To be slow in moving, to delay, to linger, to be dilatory, to spend time idly, to saunter, to lag behind." Webster.

"*Importune.*"—"To request or solicit, with urgency; to press with frequent, unreasonable, or troublesome application or pertinacity; hence, to tease, to irritate, to worry." Webster.

[1]Brothels.

153. In any municipal district—

[2](*a*) any part of which is within three miles of a Cantonment, or

[3](*b*) to which on the application of the municipality [4]the Governor in Council may by Notification have declared this section to apply,

any Magistrate of the first Class, on receiving information that a house within the limits of such district is used as a brothel, may summon the [5]owner or occupier of such house, and on being satisfied that the house is so used may order the owner or occupier to discontinue such use of it, and, if such owner or occupier shall fail to comply with such order within five days, may impose upon him a fine not exceeding twenty-five rupees for every day thereafter that the house shall be so used :

Provided that action under this section shall be taken only—

[6](*a*) with the sanction or by the order of the District Magistrate, or

[7](*b*) on the complaint of three or more inhabitants of the municipal district residing in the vicinity of the house to which the complaint refers.

1 **Brothels.**—This section is new.

"Brothel" is not defined in the Act. Webster defines it as "a house of lewdness or ill-fame; a house frequented by prostitutes; bawdy-house."

In England, the statute 25, Geo. 2, chapter 36, section 5, which was enacted "in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses and other disorderly houses" provides that any 2 inhabitants may give notice in writing to a constable, of any person keeping a disorderly-house, and then go before a Magistrate with the constable, and produce the notice given to the constable, and swear they believe the contents of the notice to be true, and then the Magistrate is to issue the warrant for the apprehension of the person accused, and the 2 inhabitants are to be bound over to produce evidence, and the constable to prosecute.

The Criminal Law Amendment Act, 1885 (48 and 49 Vic., ch. 69) Part II, "Suppression of Brothels," sec. 13 provides that "any person, who—

(1) keeps or manages or acts or assists in the management of a brothel, or

(2) being the tenant, lessee, or occupier of any premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purpose of habitual prostitution, or

(3) being the lessor or landlord of any premises, or the agent of such lessor or landlord, lets the same or any part thereof, with the knowledge that such premises or some part thereof are, or is to be used as a brothel, or is wilfully a party to the continued use of such premises or any part thereof as a brothel, "shall, on summary conviction, be liable to a penalty."

In the case of *Singleton* v. *Ellison* brought under the above section "a woman occupied a house frequented by day and night by a number of men for the purpose of committing fornication with her. No other woman lived in the house, or used or frequented it for the purposes of prostitution:—*Held* that she had not committed the offence of "keeping a brothel" within the meaning of the Criminal Law Amendment Act, 1885. Mr. Justice Wills in that case said "a brothel is the same thing as a bawdy-house—a term which has a well known meaning as used by lawyers and in Acts of Parliament. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purpose of prostitution." (L. R. (1895) 1 Q. P. sec. 607).

The section is taken chiefly from sec. 204, Panjab Act, which applies to all municipalities, provided it has been extended thereto by Government at the request of the municipalities. There the section applies also to a place used as "a brothel or by disorderly persons of any description to the annoyance of the respectable inhabitants of the vicinity"; and action is to be taken "when the Magistrate is satisfied that the house is so used, and is a source of annoyance and offence to the neighbours."

Section 41 of the Bom. District Police Act, 1890 (Bom. IV of 1890), contains very similar provisions for discontinuance of "any house * * * used as a common brothel or lodging-house or place of resort for prostitutes or disorderly persons of any description, to the annoyance of respectable inhabitants of the vicinity."

In *Crown* v. *Versimal* (1912, 6 S. L. R. 224) Versimal was the owner of the house and his wife plied the trade of a prostitute in that house. The Magistrate made an order under sec. 41 Police Act. On revision the High Court cancelled the order, holding that the place was not a brothel. *Singleton* v. *Ellison*, followed. The *ratio decidendi* being that the prostitute or prostitutes must be strangers to the occupancy.

2 **Brothels in Cantonments.**—Clauses (*a*) and (*b*) of this section make necessary provisions, for frequently a Cantonment adjoins a City Municipality, and it was considered that if for the promotion of morality and prevention of disease, the Cantonment authorities should close a brothel under the provisions of sec. 41, Bom. Act IV of 1890, it was obviously desirable that the inmates thereof should not be able to evade the order by simply moving over the border into municipal limits; nor was it fair on the rate-payers themselves to receive such undesirable neigbours.

3 **Section to apply at request of municipality.**—The provisions of this sec. 153 may be applied to municipalities not coming under clause (*a*) on the application of the municipality, but the Police Act, sec. 41, may be applied by Government without consulting any municipality.

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

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

6 **Sanction, &c., of District Magistrate.**—The District Magistrate's discretion to give sanction or not is not fettered by the fact that his predecessor did not consider it necessary to give sanction.

Even if the complaint be made to the District Magistrate and be acted upon by any other 1st class Magistrate having jurisdiction, it is a good complaint. (*Malo* v. *Emperor*, 28 I. L. R. 1910; (1910) 8 Ind. Cas. 223)

7 **Complaint of inhabitants.**—See note 7 page 27.

*(10) Service of Notices, *and penalties on non-compliance therewith.*

154. (1) The service of every notice, and the presentation of every bill under this Act, on any person or to any person to whom it is by name addressed, shall, in all cases not otherwise specially

[1]Service of notices, &c., addressed to individuals.

provided for therein, be effected by a municipal officer or servant or other person authorised by the municipality in this behalf,

(*a*) by giving or tendering this notice or bill to the person to whom it is addressed; or

(*b*) if such person is not found, by leaving the notice or bill at his last known place of abode, if within the municipal limits, or by giving or tendering the notice or bill to some adult male member or servant of his family; or

(*c*) if such person does not reside within the municipal limits, and his address elsewhere is known to the president or other person directing the issue of the notice or bill, then by forwarding the notice or bill to such person by registered post, under cover bearing the said address; or

(*d*) if none of the means aforesaid be available, then by causing the bill or notice to be affixed on some conspicuous part of the building or land, if any, to which the bill or notice relates.

[2]Service of notices on "owners and occupiers" of buildings and lands.

(2) When any notice under this Act is required or permitted by or under this Act to be served upon an [3]owner or occupier of any building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either

(*a*) by giving or tendering the notice to the [3]owner or occupier, or if there be more owners or occupiers than one, to any one of them; or

(*b*) if no such owner or occupier be found, then by giving or tendering the notice to some male adult member or servant of the family of any such owner or occupier as a aforesaid; or

(*c*) if none of the means aforesaid be available, then by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

[4]Public and general notices how to be published.

(3) Every notice which this Act requires or empowers a municipality to give or to serve either as a public notice, or generally, or by provisions which do not expressly require notice to be given to individuals therein specified, shall be deemed to have been sufficiently given or served if a copy thereof is put up in such conspicuous part of the municipal office during such

period, and in such other public buildings and places, or is published in such local papers or in such other manner, as the municipality in by-laws in this behalf prescribes.

[5]Defective form not to invalidate notice.

(4) No notice or bill shall be invalid for defect of form.

[6]Execution of acts required to be done by any notice.

(5) When any notice under this chapter requires any act to be done for which no time is fixed by this Act, the notice shall fix a reasonable time for doing the same.

[7](6) In the event of non-compliance with the terms of the notice, it shall be lawful for the municipality to take such action or such steps as may be necessary for the completion of the act thereby required to be done, and [8]all the expenses therein incurred by the municipality shall be paid by the person or persons upon whom the notice was served, and shall be recoverable in the manner provided in section 160.

**Service of notices.*—The Indian Penal Code, sec. 172, makes punishable absconding in order to avoid being served with a notice proceeding from a public servant; and sec. 173 preventing service on oneself, or on any other person, of such notice.

Forms of notices—See note 8 to sec. 46. Panjab Act, sec. 184 (1), provides that the Local Government may frame forms for any proceedings of a municipality for which a form is necessary.

1 **Origin of section**—The provisions of this section are mostly new, and are taken from the Bom. City Act. Sec. 76, of the old Act of 1873 contained some provisions as to service which are now greatly amplified. Sub-section (1) is from sections 483 and 484 of that Act. See Bengal Act, section 356, and part of 357; Madras Act, sec. 271; Panjab Act, sec. 191; and C. P. Act, sec. 131.

No special provision is made for the service of notices in respect of properties standing in the names of minors.

Sec. 43 of the N. W. P. Act adds that it is sufficient if the property to be assessed is described as to be generally known, and it shall not be necessary to name the owner or occupier thereof. By Madras Act, sec. 68, it is sufficient in all notices and proceedings to designate the party as the "owner" or the "occupier."

2 **Sub-section (2).**—This sub-section is reproduced almost varbotim from section 485, Bombay City Act.

The Act makes it optional to serve either owner or occupier. As it is not necessary to name either, it will be sufficient to address the notice to either "the owner of building No. or plot No. " or "the occupier of building No. or plot No. " The Bengal Act, sec. 357, provides that the address should be to the owner or to the occupier by name, if known, otherwise merely "to the owner" or "to the occupier" and in any case service on the occupier is sufficient. See also sections 175—182 Madras Act, sec. 271 (2), provides that in case of a notice to be served on the owner, if his address not known or he be resident outside municipal limits, it may be served on any adult occupier, and in the case of notices to be served on "the owner or occupier," it should be served on the owner in the first instance, and on the occupier only when the owner cannot be found or is resident outside limits. The Panjab Act, sec. 147 (2), provides that if a notice is to be given to "the owner or occupier" and the 2 are different persons, then it should be given to the one primarily liable so comply, and in case of doubt to both; but in any case, if owner non-resident, it will be sufficient to deliver it to the occupier, and sec. 191 (3) says a notice addressed to the owner may, if he has no place of abode or business within the municipality, be served on the occupier. Only in the case of the owner or the occupier being unknown is the notice to be addressed by the description of the "owner" or "occupier" of the property (naming it) without further name or description, and in that case it may be delivered to some person on his property. See note 5.

Panjab Act, sec. 143 (1) (*h*) (*ii*), provides for by-laws to require and regulate "the appointment by owners of buildings or lands in the municipality, who are not resident in the municipality, of persons residing within or near the municipality, to act as their agents for all or any of the purposes of the Act or any rule thereunder."

3 **"Owner or occupier":**—See notes 4 and 5. sec. 63, page 219.

Madras Act, sec. 272 (2), provides that "whenever by this Act, an obligation is imposed upon the owner or occupier of any property, the obligation shall rest upon the owner in the first instance, and upon the occupier only when the owner cannot be found or is not resident within municipal limits."

4 **Public and general notices.**—The manner of publication may be provided for in the by-laws under sec. 48 (1) (*u*).

5 **Sub-section (4).**—This is a reproduction of the last clause of sec. 75 of the Act of 1873, with the addition of the words "or bill," and follows Panjab Act, sec. 191 (5).

Defective form not to invalidate notice.—A notice may however be invalidated for various other reasons—

If time limit disregarded. I. L. R. 38 Bom. 293, noted page 223.

If essential elements required by the Act not stated therein. I. L. R. 23 Mad. 523, noted page 223.

If notice *ultra vires*. I. L. R. 36, All. 185, noted section 155.

„ not signed by person legally authorised. I. L. R. 36, All. 227.

„ vague and indefinite. 22 Ind. Cas. 767, noted section 96.

A notice not signed by the President or Secretary as required by sec. 162 of Act XIII of 1884. *Held*, to be materially defective and invalid. (*Empress* v. *Shambu Nath*, No. 8 P. R. of 1886, Crim.)

Where the Act or rule requires a notice to be issued by the committee, a notice issued by the President held to be invalid even though the committee had by resolution delegated to the President authority to issue such notices, inasmuch as the Act (IV of 1873) does not justify the committee in delegating *the powers conferred upon them* as a committee to any person. (*Gobind Ram* v. *Empress* No. 32 P. R. of 1881, Crim.)

The mistake of a few rupees in a bill or notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Act have been substantially complied with, the municipality being protected by this section against such mistakes. (See *Gopee Kishen Gosain* v. *Ryland*, 562 C. R., 9 W. R.)

Section 102 of the Calcutta Act provides that no act done or proceeding taken under the Act shall be questioned on the ground merely of—(*c*) any defect or irregularity not affecting the merits of the case."

Where the General Committee approved of the suggestion of the Building Sub-Committee that certain additions to a building were unauthorised, and that an application should be made to the Magistrate under section 442 of the Act, and directed the Chairman to make it, whereupon an application was made, purporting to come from the Chairman, but signed by the Secretary to the Corporation, who was also Secretary to the General Committee:—*Held*, that the irregularity, if any, was cured by section 102 (1) (*c*) of the Act. (*Kissori Lal Jaini* v. *The Corporation of Calcutta* (1910) I. L. R. 37, Calc. 585.)

6 **Sub-section (5).**—This is reproduced from Panjab Act, sec. 147 (1), and C. P. Act, sec. 88 (1). Madras Act, sec. 271 (4), provides that in the absence of any distinct provisions to the contrary in the Act, the period fixed in a notice, is to be calculated from date of service.

The Bombay High Court held in the case of *Munchershaw Bezonji* v. *The Bandora Municipality* (1889) that the time of the notice runs a day exclusive of service.

Under the old sec. 75, certain written notices "shall prescribe a time, which shall at the discretion of the municipality, be not less than 3 days or more than one month."

7 **Sub-section (6).**—This is a re-enactment of the 2nd clause of old sec. 75.

The marginal note should be, "municipality to take action on non-compliance."

Compare Madras Act, sec. 264, sub-section (2), of which provides that in taking such action the municipality "may utilise any materials found on the property concerned, or may sell them and apply the sale proceeds towards payment of the expenses incurred." See Bom. City Act, sec. 490, note 1, sec 156.

The Panjab Act, sec. 147 (3), provides that "the committee may, after 6 hours notice, by its officers, cause the act to be done."

The Bengal Act, sec. 180, provides that "if the person fail, *within* the time specified, *to begin* to execute such work or to do such thing, *and thereafter diligently to continue the same to the satisfaction of the commissioners until it is completed*, they may, after giving 48 hours notice by a notification posted up on or near the spot enter upon the land and perform all necessary acts, &c." But before such action is taken, a special procedure is prescribed (secs. 177-179) when owners or occupiers are required to execute works, and consists of the service of a special notice, opportunity for preferring objection, procedure in case objector alleges that the cost of work will exceed Rs. 300, hearing of objection and explanation of final order.

How far right of removal extends.—In the event of any person not complying with a notice for the removal of a projection served upon him by a municipality under this section, it is competent to the municipality, under para. 2 of section 75 (now sec. 154 (6)), to do whatever is necessary in order to remove the encroachment and recover the expenses of so doing from the person concerned.

If the encroachment cannot be removed without removing the support of some portion of the building which does not form part of the encroachment, the power given by para 2 of section 75 will extend to the removal of the superstructure and of every portion of the building which, in order to avoid risk of danger, it may be necessary to remove in order to completely abate the encroachment.

The municipality would not be liable for damages in respect of anything necessarily done for the *bona fide* purpose of enforcing their notice.—(G. R. 385 of 2 Feb. 1887, Gen. Dep.)

Where a municipality cleared out and re-excavated a tank, after default on the part of the owner, *Held* that the municipality had a discretion as to how the work should be carried out, and that even though the rates charged by the municipality were higher than those which could be obtained by other persons, there was no ground for the interference of the High Court. (*Gugesh Chander Dutt, in re* 285 C. R., 16 W. R.) See note of a similar ruling at note 3, sec. 120, p. 319.

8 **"All the expenses."**—Madras Act, sec. 264 (*i*), says "all reasonable expenses." See note 2, sec. 135; note 3, sec. 120, p. 319.

Bengal Act. sec. 181—182, provide for apportioning expenses among owners and occupiers. Sec. 211, provides that if repairs have been done to an unoccupied house or other structure, the municipality may keep possession of the same until all expenses paid.

155. Whoever disobeys or fails to comply with any lawful direction given by any written notice issued by a municipality under any power conferred by this chapter, or fails to comply with the conditions subject to which any permission was given to him by the municipality under any power so conferred, shall, if the disobedience or failure is not an offence punishable under any other section, be punished with fine which may extend to fifty rupees, and with further fine which may extend to five rupees for every day on which the said disobedience or failure continues after the date of the first conviction:

[1]Punishment for disobedience to orders and notices not punishable under any other section.

Provided that when the notice fixes a time within which a certain act is to be done, and no time is specified in this Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Act.

1 **Origin of section.**—This section is taken from sec. 122 of the C. P. Act, which is identical with sec. 169, Panjab Act, and 147 U. P. Act.

See notes to sec. 161 as to questions which the alleged offender may raise before Magistrate at such a prosecution.

In most cases specific penalties are provided for specific acts of commission or omission. This section provides for penalties where no specific punishment is mentioned.

The marginal note should be, "Punishment for non-compliance, &c., of written notices or conditions of permissions, not punishable under any other section."

'*This chapter*':—That is from sec. 90, inclusive.

Madras Act, sec. 263, prescribes a penalty for doing of an act without a license or permission when such license or permission is necessary, and the person so doing may be required to alter, remove, or, as far as is practicable, to restore to its original state the property.

'*Further fine*':—See note 3, sec. 94.

Penalty for failure to demolish, &c.—This would be punishable under section 155 with fine of Rs. 50 and further fine of Rs. 5 per day after conviction for continuing to disobey notice. Under the Bombay City Act the fine is Rs. 1,000, but no recurring penalty. Under the Calcutta Act the fine is Rs. 500 in case of a masonry building and Rs. 50 in the case of a hut, and a further fine of Rs. 100 and Rs. 10 respectively for each day of failure to comply after 1st day. *Held* under the Calcutta Act, that imprisonment in default of payment of fine could not be imposed for offences to which a daily penalty is assigned in addition to the substantive fine. Such are not offences within the meaning of section 64, Indian Penal Code. (*Basanta Kumari Debi* v. *Corporation of Calcutta*, 194, 15 C. W. N. 906.)

Prosecution for disobedience to notice—Validity of notice to be considered.—Before anyone can be convicted of an offence under section 147 of the U. P. Act the Court must be satisfied that what he had disobeyed was a notice lawfully issued by the Board under the powers conferred upon it by the Act. *Chote* v. *Municipal Board of Lucknow*. 9 O. C. 29; 3 Cr. L. J. 205, *Queen-Empress* v. *Jasoda Nand*, 20-A, 501; A. W. N. (1898) 141 followed. (*Emperor* v. *Piari Lal*, I. L. R., 36 All. 185; 23 Ind. Cas. 745.)

Competence of accused to challenge validity of notice.—*Held*, that section 152 of the U. P. Act, does not prevent a person who may be prosecuted for disobedience to a notice issued by a municipal board from establishing the defence that the notice in question was not a matter of fact the board's notice, inasmuch as it was not signed by any one legally authorized to sign such notices on behalf of the board. (*Emperor* v. *Hazari Lal*, I. L. R., 36 All., 227; (1914) 25 Ind. Cas. 326.)

When a notice was issued under section 88, U. P. Act (to remove the building) and the person was prosecuted under section 87 for erecting a building without permission, *held* that the conviction was bad. (*Ramnath* v. *Municipal Board, Muttra* (1915) 26 Ind. Cas. 670.)

Non-compliance not punishable if party no power to comply.—Directions given in a notice under sec. 408 of the Calcutta Act (Bengal Act III of 1899) to the owners of property, during the pendency of litigation in respect of that property, cannot be said to be lawfully given, if it is not open to the owners at that time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice. A person cannot be punished for non-compliance when it is not in his power to comply. (*Poorna Chand Burul* v. *Corporation of Calcutta*, I. L. R. (1906) 33 Cal. 699.)

No conviction where the order alleged to have been disobeyed was vague and indefinite. See 22 Ind. Cas. 767, noted sec. 96.

Under the C. P. Act if a building is erected in contravention of the Act, a fresh notice for removal is necessary but before issue of the notice the municipality must pass a resolution on the subject. If no such resolution passed and action taken, it is *ultra vires* and plaintiff may obtain compensation for the act resulting in injury to him. See 6 Ind. Cas. 431 note 1 sec. 175.

'Municipality in default of owner or occupier may execute works and recover expenses.

156. (1) Whenever, under the provisions of this Act, any work is required to be executed by the owner or occupier of any building or land, and default is made in the execution of such work, the municipality, whether any penalty is or is not provided for such default, may cause such work to be executed; and the expenses thereby incurred shall, unless otherwise expressly provided in this Act, be paid to them by the person by whom such work ought to have been executed, and shall be recoverable in the same manner as an amount claimed

on account of any tax recoverable under Chapter VIII either in one sum or by instalments as to the municipality may seem fit;

[2]Provided that—

Agreement for construction of drainage and water connections.

(*a*) whenever any drainage scheme or water-works scheme has been commenced by any municipality, it shall be lawful for the municipality, without prejudice to their powers under sub-section (1) or section 101 or any other provision of this Act, to make a special agreement with the owner of any building or land as to the manner in which the drainage or water-connection thereof shall be carried out, and the pecuniary or other assistance, if any, which the municipality shall render, and any payment agreed upon by the owner shall be recovered in accordance with the terms of such agreement, or in default in the manner described in sub-sections (2) and (3) :

[3]Provided also that—

Improvement expenses.

(*b*) when an order has been passed under sub-section (3) of section 90, sub-section (1) of section 91, sub-section (2) or (6) of section 96 or under sections 99, 101, 106 or 107 or when permission has been given under section 102, or when an arrangement has been made under proviso (*a*) of this sub-section, the municipality may, without prejudice to any other powers under this Act, if they think fit, declare any expenses incurred as aforesaid by the municipality, to be improvement expenses. Improvement expenses shall be a charge upon the premises or land, and shall be levied in such instalments as the municipality decide, including interest at the rate of six per cent. per annum, and shall be recoverable in the manner described in sub-sections (2) and (3).

Power to levy charges on occupier, who may deduct the same from his rent.

[4](2) If the defaulter be the owner of the building or land, the municipality may, by way of additional remedy, whether a suit or proceeding has been brought or taken against such owner or not, require subject to the provisions of sub-section (3), the payment of all or any part of the expenses payable by the owner for the time being, from the person who then, or any time thereafter, occupies the building or land under such owner; and in default of payment thereof by such occupier on demand, the same may be levied from such occupier, and every amount so leviable shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII; every such occupier shall be entitled to deduct from the rent

payable by him to his landlord so much as has been so paid by or recovered from such occupier in respect of any such expenses.

Occupiers not to be liable for more than the amount of rent due.

[5](3) No occupier of any building or land shall be liable to pay more money in respect of any expenses charged by this Act on the owner thereof, than the amount of rent which is due from such occupier for the building or land in respect of which such expenses are payable at the time of the demand made upon him, or which at any time after such demand and notice not to pay the same to his landlord, has accrued and become payable by such occupier, unless he neglect or refuse, upon application made to him for that purpose by the municipality, truly to disclose the amount of his rent, and the name and the address of the person to whom such rent is payable; but the burden of proof that the sum demanded of any such occupier is greater than the rent which was due by him at the time of such demand, or which has since accrued, shall be upon such occupier:

Provided that nothing herein contained shall be taken to affect any special contract made between any such occupier, and the owner respecting the payment of the expense of any such works as aforesaid.

1 **Sub-section (1).**—This is a reproduction of sec. 77, clause 1, of the old Act, 1873, with the exception of the words "unless otherwise expressly provided in this Act" which are new.

"*Owner or occupier*".—See notes 4 and 5, sec. 63. See sec. 158 as to occupier resisting owner.

"*May cause such work to be executed.*"—The Panjab Act, sec. 147 (3), says "may, after 6 hours' notice, by its officers, cause the act to be done." So also the C. P. Act, sec. 88 (2). Compare sec. 154 (6), and see notes 7 and 8 thereto. See '*Unreported case*' note 3, sec. 120.

If a person considers that the notice or orders of the municipality are illegal or *ultra vires*, and wishes to protect himself against the action of the municipality under this section, he may sue in a Civil Court for an injunction to restrain the municipality.

"*Expenses.*"—Bom. City Act, sec. 506, provides that these, or any balance unrecovered after resort to other methods of recovery, may be recovered by civil suit.

"*The person by whom such work ought to have been executed.*"—Who is this in cases where the Act says by "the owner or occupier."?

The Bom. City Act, sec. 489 (1), says "the person or any one of the persons to whom such requisition or order was addressed." Madras Act, sec. 264, says "the person to whom the notice has been given." Bengal Act, sec. 180, says "the owners or the occupiers, or the owners and the occupiers, according as the requisition was addressed to the owners or to the occupiers, or to the owners and to the occupiers;" and secs. 181, 182, give the municipality power to apportion such expenses in each case. The Panjab Act, sec. 148, says "the person in default," and then goes on to provide that as between themselves and the committee both the owner and occupier shall be deemed to be in default for the purposes of this section, but that one of them shall be deemed to be primarily in default upon whom as between landlord and tenant, the duty of doing the required act would properly fall either in pursuance of the contract of tenancy or by law."

Liability may be contested by Civil suit:—Bengal Act, sec. 184, provides that any owner or occupier may do so, but such suit is no bar to the recovery in the manner provided. Bom. City Act, sec. 403, provides that disputes as to expenses should be referred by the municipality for the decision of the Chief Judge, Small Cause Court, and recovery deferred till decision.

Recovery by sale of materials:—Bom. City Act, sec. 490, provides that in case of removals, the expenses may be recovered by sale of the materials removed, with option to owner to stop sale on payment of the expenses, and if materials not claimed, they may be sold and proceeds credited to municipal fund. See Madras Act, sec. 264, note 7, sec. 154.

Agreement for payment.—Bombay City Act, section 493, provides that the Commissioner may take an agreement to pay such expenses in instalment.

2 **Proviso (a).**—This *proviso* is new. Sec. 261 (*c*) of the Bom. City Act, provides for an arrangement being made with any person for a supply of water.

3 **Proviso (b).**—This proviso is new and part of it is taken from sec. 494 and 495 (1) of the Bom. City Act, sub-sec. (2), of which provides that these improvement expenses are to be paid by the occupier, and, in case of premises being unoccupied, by the owner. See also sec. 496, 497, as to proportion of such expenses that may be deducted from rent, and redemption of charge for such expenses.

4 **Occupier primarily liable.**—This sub-section is a reproduction of clause 2 of the old sec. 77, except that thereunder the levy was to be "by distress of the goods and chattels of the occupier;" now the expenses are recoverable as taxes. Secs. 492 (1) and (2) (*b*), Bom. City Act, contain provisions similar to old sec. 77. See Panjab Act, sec. 148 (3).

Bengal Act, section 183, says "if the Commissioners shall certify that such cost ought to be borne by the owner, it shall be deducted by such occupier from the next and following payments of rent due or becoming due to such owner, or may be recovered by him in any Court of competent jurisdiction."

Madras Act, section 265, says the occupier is "to pay to the municipality, instead of to the owner, the rent payable by him, as it falls due, up to the amount recoverable, or such smaller amount as the municipality think proper; and such amount shall be deducted from that payable by the owner;" and for the purpose of deciding whether such action should be taken, the occupier may be required to state the rent payable and the name and address of the person to whom it is payable.

5 **Extent of occupier's liability.**—This is a reproduction of clause 3 of old sec. 77, and is on the lines of sec. 492 (2) (*a*) (*e*), Bombay City Act, and sec. 148 (4) (*b*) of the Panjab Act.

Occupier, in default of owner, may execute works and deduct expenses from his rent.

157. Whenever default is made by the owner of any building or land in the execution of any work required to be executed by him, the occupier of such building or land may, with the approval of the municipality, cause such work to be executed, and the expense thereof shall be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

Origin of section.—This is a reproduction of sec. 78 of the old Act, 1873, except that "building" is substituted for "house;" and follows Bom. City Act, sec. 499; Madras Act, sec. 266, 266-A.

[1]Proceedings if any occupier opposes the execution of the Act.

158. If the occupier of any building or land prevent the owner thereof from carrying into effect, in respect of such building, or land, any of the provisions of this Act, after notice of his intention so to carry them into effect has been given by the owner to such occupier, any Magistrate upon proof thereof, and upon application of the owner, may make an order in writing requiring such occupier to permit the owner to execute all such works, with respect to such building or land, as may be necessary for carrying into effect the provisions of this Act, and may also, if he think fit, order the occupier to pay to the owner the costs relating to such application or order; and if, after the expiration of eight days

from the date of the order, such occupier continue to refuse to permit such owner to execute such work, such occupier shall, for every day during which he so continues to refuse, be punished with a fine which may extend to fifty rupees; and every such owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

1 **Origin of section.**—This is a reproduction of sec. 79 of the old Act of 1873, and is identical with Madras Act, sec. 273, except that instead of "any Magistrate," it is "the Municipal Council" and the omission of the clause as to costs. Under Bombay City Act, sec. 507, action is to be taken on application to the Chief Judge, Small Cause Court. See also sections 508—512 of that Act. This is also identical with sec. 622 Cal. Act.

The owner of a *bustee*, who has leased it out to others, and is thereafter served with a notice, under s. 408 of the Cal. Act, to carry out certain *bustee* improvements, is discharged from obligation where he has proceeded and obtained an order under s. 622 against his lessee only and is prevented by the sub-tenants of the latter, actually in occupation, from executing the required improvements. *Semble*: The lessee may take action under s. 622 against his tenants in the event of their proving refractory, and he can, on failure to do so, be himself proceeded against. *Held* also that the owner was not bound to proceed against the tenants actually residing on the land. In relation to the owner the lessee is the 'occupier' within the meaning of the term in sec. 3 (30) of the Act. This is also clear when another section speaks of a gradation of occupiers for non-compliance. (*Benode Lal Ghose* v. *Corporation of Calcutta* (1913,) I. L. R. 41 Cal. 164.)

Continuing offence.—See note 3 p. 270.

159. It shall be lawful for the president or vice-president, or any councillor or officer authorised by the municipality for such purposes, to enter for the purposes of this Act, between sunrise and susent, into and upon any building or land, as well for the purpose of making any survey or inspection they may be entitled to make as for the purpose of executing any work authorised by this Act to be executed by them:

[1]Entry for purposes of the Act.

[2]Provided that except when herein otherwise provided, no building or land which may be occupied at the time shall be entered unless with the consent of the occupier thereof, without twenty-four hours' written notice thereof having been given to the said occupier:

[3]Provided also that in the case of buildings used as human dwellings, due regard shall be paid to the social and religious customs of the occupiers.

1 **Origin of section.**—This is sec. 80 of the old Act of 1873 reproduced with some slight alterations. Compare Bom. City Act, sec. 488; Madras Act, sec. 274.

See Madras Act, sec. 275, as to power to enter on lands adjacent to works for depositing thereon materials connected with such works.

Panjab Act, sec. 107 (2), says no notice necessary if the place is a stable or house or shed for horses, cows, &c., and sec. 109 gives power to enter for discovery of vehicles or animals liable to taxation.

2 **Notice of entry.**—*Occupied.*—Apparently entry on unoccupied building or land requires no notice. Panjab Act, sec. 109, requires the notice to be given to the *owner* in case of *unoccupied* building or land.

"24 *hours*".—Madras Act, sec. 274, says 6 hours. The Bom. City Act, sec. 488, which is similar to this proviso, adds "unless for any sufficient reason it shall be deemed inexpedient to furnish such information of the purpose thereof."

3 **Entry of human dwellings.**—Under the old section, the word was "prejudices;" under the Bom. City Act, it is "usages;" and in the Panjab Act, it is "sentiments," and further, "sufficient notice shall, in every instance, be given, even when entry may otherwise be without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed."

The Panjab Act, sec. 202, has somewhat similar provisions.

There being a dispute between the municipality and the owner of certain land about a drain which ran through the land and which the municipality were apparently bound to repair, the municipality claimed to have the right to enter upon the land and carry out the repair. Accordingly the municipality gave him a notice under this section and in the notice gave certain directions not to offer any obstruction to the municipal servants in the repair. For causing such obstruction accused was convicted under section 155.

Held, reversing the conviction, that there was nothing in the section authorising the issue of such a notice. All that is necessary under the section is simply to intimate to the occupier of the land that the municipality will enter for the purposes mentioned in this section at a specific hour on a specific day. If the occupier does anything to prevent the entrance, he cannot be said to disobey the notice, for the notice is a mere condition precedent to the right of the municipality to enter. Though the act may amount to wrongful restraint or wilful obstruction, as the case may be, it is not punishable under section 155. (*Imp.* v. *Purshotum* (1904) 6 Bom. L. R. 538.)

160. (1) If a dispute arises with respect to any compensation or damages, which are [2]by this Act directed to be paid, [3]the amount, and if necessary the apportionment of the same, shall be ascertained and determined by a [4]Panchâyat of five persons, of whom two shall be appointed by the municipality, two by the party to or from whom such compensation or damages may be payable or recoverable and one, who shall be Sir-Panch, shall be selected by the members already appointed as above.

[1]Arbitration in cases of compensation, &c.

[5](2) If either party, or both parties fail to appoint members, or if the members fail to select a Sir-Panch within one month from the date of either party receiving written notice from the other of claim to such compensation or damages, such members as may be necessary to constitute the Panchayat shall be appointed, at the instance of either party, by the District Judge.

[6](3) In the event of the Panchayat not giving a decision within one month from the date of the selection of the Sir-Panch, or of the appointment by the District Court of such members as may be necessary to constitute the Panchayat, the matter shall, on application by either party, be determined by the District Court which shall, in cases in which the compensation is claimed in respect of land, follow as far as may be the procedure provided by the Land Acquisition Act, 1894, for proceedings in matters referred for the determination of the Court.

Provided that—

(*a*) no application to the Collector for a reference shall be necessary, and

(*b*) the Court shall have full power to give and apportion the costs of all proceedings in any manner it thinks fit.

1 **Origin of section.**—This is a re-enactment of sec. 81 of the old Act of 1873, with some slight alterations.

The words "costs or expenses" were struck out by the Amending Act of 1914 as it was considered desireable to restrict the decision of Panchayets to the matters for which they are properly suited, *viz.*, regarding damages and compensation. Dispute as to costs and expenses are provided for by new sec. 160-A.

Madras Act, sec. 281, says compensation in cases of convictions is to be determined by the Magistrate. This agrees with Bom. City Act, sec. 502 (2); and sec. 504 provides that compensation in other cases and expenses, in case of dispute, are to be determined on application to the Chief Judge, Small Cause Court.

By Bengal Act, sec. 135, damages or compensation is to be ascertained and determined by a Civil Court. Panjab Act, sec. 149 (2), provides that compensation should be settled by agreement of the parties, and in case of non-agreement, in the manner provided by the Land Acquisition Act.

This Panchayat system has, it seems, been found in practice to be highly unsatisfactory from a municipal point of view. Though, in theory, the system may appear to be very sound, yet in actual working the result has invariably been to award exorbitant rates for the land acquired. The reason for this is, that the money comes from the public purse, and not out of the pockets of an individual, and in consequence the tendency is to be liberal in awarding compensation. The award of the arbitrators therefore always errs on the side of liberality; in fact, preposterous rates have often to be paid by the municipality for land acquired under this system. The difficulty experienced in appointing a suitable person as a "Sir Panch," who has a proper sense of the responsibility of his position, is another drawback which militates against the impartial working of this system. It was therefore suggested that the system should be abolished, disputes being determined by the District Court, or if not, then it might be improved by remunerating the arbitrators by fees paid beforehand, and in any case there should be no Sir Panch, cases of difference of opinion being referred to the Collector who could then put the machinery of the Land Acquisition Act into motion. These proposals were not adopted.

Persons disqualified for appointment on Panchayet.—A Mamlatdar, who was a member of the municipal committee which sought to acquire the land, and who acted for the Collector in the negotiations and gave evidence as to its value was held to be disqualified as an assessor. (*Swamiras Vithal* v. *Collector of Dharwar.* I. L. R. 17 Bom. 299; P. J. 1892, p. 189.)

A person who besides being a rate-payer of the municipality for whom the land was to be taken up, is also a member of a firm having large contracts with the municipality, though those contracts are not directly or indirectly connected with the question of the land, is a "qualified assessor" within the meaning of section 19 of Act X of 1870. (*Sorabji* v. *Assistant Collector, Prant, Bassein,* P. J. 1892, p. 327.)

2 **By the Act directed to be paid.**—Under the Public Health Acts 1875 (38 and 39, Vict. C. 55, secs. 179, 181 and 308, the necessity for arbitration may arise for the purpose of assessing compensation payable to a person who has sustained damage in the execution by the council of its statutory powers, or for the purpose of determining all such matters as by the statutes are specially authorised or directed to be so determined.

The damage in respect of which compensation is payable must be such as would have been admissable, but for the authority of the statute. (See *Hall* v. *Bristol Corporation*, L. R. 2 C. P. 322; *Rose* v. *Airedale Drainage Commissioner* 1 C. P. D. 402; *Herring* v. *Metropolitan Board of Works* 34 L. J. (M.C.) 224; *Cessford* v. *Dover Harbour Board* (1898) Times 2 April; *Burgess* v. *Northwich Local Board* 6 Q. B. D. 264.)

It must arise from the execution of the works. (See *Cessford* v. *Dover H. B. supra*) Merely giving a notice of intention to execute a work *e. g.*, to lay a sewer through private lands, acted upon by the claimant, does not entitle him to compensation for expenses so incurred (*Davis* v. *Witney Urban District Council*, (1899) 63 J. P. 279 C. A.)

It must not arise merely from the use of the works after construction. (See *Durrant* v. *Branksome Urban Council*, (1897) 2 Ch. 291, 305 C. A.; *Horton* v. *Colwyn Bay Urban Council*, (1908) 1 K. B. 327 C. A.), nor under other statutory or common law powers. (*Burgess* v. *Northwich Local Board supra*; *Robert* v. *Falmouth, San. Authority* (1888) 52 J. P. 741.)

The damage in respect of which compensation is payable must be the result of a lawful exercise of the statutory powers (*Cessford* v. *Dover Har. Board supra*); and when it arises

from something done by the council which it is not authorised to do, the remedy is by action and not by a claim for compensation. (*R.* v. *Darlington Local Board of Health*, (1865) 6 B. & sec. 562.)

The damage sustained need not be damage to land or an interest in land, but it includes any species of damage suffered by the execution of powers. Prospective or future, as well as proved, damage may generally be included. (*Uttley* v. *Todmudin District Board of Health*, 44 L. J. (C. P.), 19; *Colac Municipality* v. *Summerfield*, A. C. 187, P. C.; *Re Brown* v. *Hankins Contract*, 80 L. T. 127 C. A.)

3 **The amount of compensation to be determined.** *Compensation, how to be assessed.*—"A mosque in Bombay was abutted on 3 sides by public streets. The municipality under sec. 166 of Bom. Municipal Acts III of 1872, and IV of 1878, required the trustees of the mosque to set back the building on the said three sides for the purpose of improving the public streets. It was contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question.

"*Held* that the words of sec. 163, were intended to ensure compensation to the owner for every sort of damage and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to. Compensation becomes due under the section as soon as the corporation takes possession, which is when the owner begins to build, and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing, and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him. *Held*, also that in cases of compensation granted under sec. 163, the addition of 16 per cent. cannot be allowed." (*Municipal Commissioner, City Bombay* v. *Patel Haji Muhammad* (1890), I. L. R. 14 Bom. 292.)

The municipality acquired a portion of a plot of land at a time when the temporary boom in prices caused by the announcement of the transfer of the capital to Delhi had not subsided. *Held* the compensation to be awarded by the Court under section 160 (3) of the Act was not the rate which the plot would have fetched after the boom had subsided, but the price which a speculative purchaser would have paid for the land at the time of the acquisition.

No compensation can be awarded for severance of the plot when owing to the acquisition of the portion for widening of the street, the value of the remaining plot had been actually enhanced.

Held further that in Karachi City, the price of small plots used as shops has a close relation to the rent. (*The Karachi Municipality* v. *Khatanmal*, VIII S. L. R. 129.)

Civil suit for recovery of compensation, &c., does not lie.—All claims arising under this section *must* be brought in the manner here provided and cannot be recovered by a civil suit. The Act having provided a special tribunal for this purpose resort must be had in the first instance to it, and it is only when the tribunal acts *ultra vires* that the Civil Courts can interfere.

Civil suit.—So long as the *amount* only of the compensation and its apportionment is in dispute, no suit for its recovery can be brought (*vide* I. L. R. 12, Mad. 105.) But if the municipality disputes its *liability* to grant compensation, an ordinary Civil suit for recovery would apparently lie.

As a rule an action will not lie in respects of matters for which compensation is awardable. See Halsbury's Laws of England. Actions Vol. 1, p. 8. Compulsory Purchase of Land. Corp. Vol. 6, p. 31, *et seq* p. 44. Injunction Vol. 17, p. 224. See also end of note 6 *infra*.

As to notice to be given prior to institution of suit and period of limitation, see sec. 167.

4 **Panchayat must deliberate collectively; Sir Punch not umpire.**—The municipality having determined to acquire a portion of the plaintiff's house for the purpose of widening a street, plaintiff was willing, but the parties could not agree to the price. That question was referred to arbitration under this section

Held that there must be a collective deliberation by all the five members. Where after inquiring into the matter in dispute, two members decided on one figure, two others on another figure, and then a reference was made to the Sir-Punch who expressed his agreement with the figure of one of the sets, *held* that this was not the correct procedure. The Sir-Punch could not be treated as an umpire.

Such a decision cannot be filed as an award.—Where such a decision was passed, and, an application being made to the Subordinate Judge to file the award of the Sir-Panch, he refused to do so, *held* that the Sub-Judge acted rightly. *Quere*:—Whether a decision under

s. 160 came under s. 525 Civil Procedure Code (see now 2nd Schedule of the Code of 1908), the procedure under sec. 160 not being a reference of a matter to arbitration within the meaning of sec. 525, C. P. C.

When there is a definite contract municipality cannot back out of it.—Upon the above ruling applicant moved the District Court to determine the compensation to be paid by the municipality, and the Court accordingly made its award. The municipality appealed from that award, contending that as they no longer required the plaintiff's premises, and as there never was a completed contract with him, they were entitled to resile from the bargain. *Held* that where, as in this case, there is a definite and completed contract to give and take the estate upon terms to be settled thereafter, and the valuation cannot be made *modo et forma*, the Court will substitute itself for the arbitrators, especially where under a special statute it is compelled to ascertain the price. Of such a contract specific performance would be awardable if *Gregory* v. *Mighell* (1811) 18 Ves. Jun. 328. The municipality cannot resile from it. (*The Poona City Municipality* v. *Ramchandra*, (1908) 10 Bom. L. R. 617.)

6 **Decision by District Court.** *Appeal from District Court finding.*—The High Court abstained from expressing an opinion on this point as in the circumstance of the case, it was not necessary to do so in the circumstances of the last mentioned case.

No appeal from District Court's order.—The right to compensation and the remedy for the determination and apportionment of the amount are given by the Act itself; so the right must be asserted and the remedy pursued only in the manner and upon the condition prescribed by the Act. It is a well known principle of law that, where a statue creats a right not existing at common law and prescribes a particular remedy for its enforcement, then that remedy alone must be followed: per Willes J., in *Wolonhampton New Waterworks Co.* v. *Hawkesford*, (1859) 6 C. B. N. sec. 336.

This Act no where gives the right of appeal. Sec. 160 does not provide for an appeal nor can any such right be implied, indeed the implication is against a right of appeal.

The words "follow as far as may be the procedure provided by the Local Acquisition Act" mean that only these provisions of that Act apply to the proceedings before the District Court which regulate its procedure in land acquisition cases. The said provisions do not include sec. 54 which gives the right of appeal from an award under the Act. The Legislature has been very careful to limit the application of the Land Acquisition Act to proceedings by the District Court under sec. 160 (3) that the implication is distinctly against a right of appeal.

An order under sec. 160 (3) is not a decree, because it is made, not under the ordinary civil jurisdiction, but under a special jurisdiction created by a special Act. *Meenabshi Naidoo* v. *Subramamya Sastri*. (1887) L. R. 14 I. A. 160. No right of appeal under any general law, nor can a right of appeal be assumed "on any matter which comes under the consideration of a Judge; such right must be given by statute or by some authority equivalent to a statute." (*Chunilal Virchand* v. *Ahmedabad Municipality*, I. L. R. (1912) 36 B. 47; 13 Bom. L. R. 958.)

See the rulings in note 7, section 22, p. 65 and note 1, section 86, page 256.

In *Singaranchi Mudeliar* v. *Vardaraju Mudeliar* 1909, 2 Ind. Cas. 426 it was held that where the Collector of the District acting under rules under the Madras Act, granted sanction for a prosecution, he was not a 'Court' within the meaning of section 195, Crim. Procedure Code, and therefore no appeal lay to the District Judge against the order of sanction.

Sub-section (2).—The marginal note should be, "Panchayat when to be appointed by District Judge."

Sub-section (3).—The marginal note should be "District Court when to determine matter."

Costs or expenses how determined and recovered.

160-A. If a dispute arises with respect to any costs or expenses which are by this Act directed to be paid, the amount, and if necessary the apportionment of the same, shall, save where it is otherwise expressly provided in this Act, be ascertained and determined by the municipality and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under chapter VIII.

Origin of section.—This was inserted by the Amending Act, of 1914.

CHAPTER X.—PROSECUTIONS, SUITS AND POWERS OF POLICE.

[1]Municipality may prosecute.

161. (1) The [2]municipality [3]and, in the case of offences against any of the provisions of this Act mentioned in section 183 (*d*), the chief officer, [3]may [4]direct [5]any prosecution for any public nuisance whatever, and may order [6]proceedings to be taken for the recovery of any penalties, and [7]for the punishment of any person [8]offending against the provisions of this Act, [9]or of any by-law thereunder, and may order the expenses of such prosecutions or other proceedings to be paid out of the municipal fund:

[10]Provided that no prosecution for an [11]offence under this Act shall be [12]instituted except within [13]six months next after the commission of such offence.

Jurisdiction of Magistrate.

[14](2) Any prosecution under this Act or under any by-laws thereunder may, save as therein otherwise provided, be instituted before any Magistrate and every [15]fine or penalty imposed under or by virtue of this Act or any by-law thereunder, [16]and also all claims to compensation or other expenses for the recovery of which no special provision is otherwise made in this Act, may be recovered [17]on application to such Magistrate, [18]by the distress and sale of [19]any moveable property [20]within the limits of his jurisdiction belonging to the person from whom the money is claimable.

1 **Origin of section.**—Sub-sec. (1) is a re-enactment of sec. 82 of the old Act of 1873, except the words "or of any by-law thereunder" which are new. It is identical with Bengal Act, sec. 352.

Costs of litigation.—In *Attorney General* v. *Mayor of Norwich*, 2 Myl. and Cr. 406, 425, 428, the Lord Chancellor remarked that the clause in the Act of 1835 authorising the payment of expenses not otherwise provided for, which shall be necessarily incurred in carrying into effect the provisions of the Act "cannot merely mean expenses to carry into effect that which must be done to set the Act of Parliament in operation, but must mean also those expenses which would arise out of the duties imposed on the parties by the Act." On this principle, it has been held that the costs of litigation undertaken *bona fide* and on reasonable grounds for the defence of the corporate rights, may be paid out of the public fund, though such litigation is eventually unsuccessful. *Reg.* v. *Mayor of Tamworth*, 19 L. J. N. S. 433.

2 **Municipality may direct.**—This power rests with the Managing Committee, sec. 27 (2), subject to any limitations prescribed specially or generally by rules under sec. 46 (*a*).

In the Bill, it was proposed that "the municipality, or the Managing Committee, or the Chairman of any Committee, or any officer authorised either specially or generally in this behalf by the municipality, or, in a City Municipality, subject however to the provisions of Chapter XII, the Chief Officer, if any" might direct prosecutions. This has, however, been omitted.

When Chief Officer may direct.—The words "and in case of offences * * * the chief officer" were inserted by the Amending Act, of 1914.

"29. The peculiar wording of this section seems to apply, that in the case of public nuisances, the direction should be special with reference to each particular case.

Direction implies not only an order, but instructions for guidance. It would be impossible by a general rule to direct prosecutions in all cases of nuisance whatever, and the Legislature seems, in its use of the singular number, to have recognised that a special direction must be given in each such case.

"30. But the same difficulty does not seem to arise in respect of penalties recoverable under the Act itself for offences therein definitely specified. As I have above pointed out, action must under sections 68 and 81 be initiated without awaiting the special authority of the municipality or its Committee in each case, and in respect of offences against specific provisions of the Act, there can never be any doubt that the interests which a municipality is bound to protect have been affected. No exercise of discretion is necessary in such cases to decide whether the facts, if proved call for municipal interference, any more than in the case of recovering municipal taxes, and it would therefore seem to be competent to a municipality to order by general rules, that the duty of taking proceedings for the recovery of penalties should be performed by officers appointed for that purpose. It is clearly unnecessary for the municipality to consider in each individual case whether the evidence is sufficient to secure a conviction. That is a matter necessarily to be left to the Magistrate, still less is it a part of their duty to pay any regard to the individual offender, and it, therefore, seems to me that there is absolutely nothing in such cases on which they can be called to exercise their discretion, except the selection of the officer who is to make the formal complaint. Such officer may, therefore, it seems, be appointed, and his duties determined by rules under section 32 (*b*) and in so appointing him and determining his duties, the municipality would, I think, be exercising, not delegating, their power, and would have done all that is required of them. In such case, their power is a power of appointment and assignment of duties, such as they would exercise in appointing an inspector or a surveyor to perform a class of duties.

31. It would, of course, be competent to a municipality to exclude from the duties assigned to any of its officers the institution of any particular class of proceedings and such discrimination would itself be an exercise of the power conferred on municipalities.

The power of instituting proceedings is not a power conferred on municipalities. Their power is to order the institution and when this can be done in respect of classes of cases by a mere mandate unaccompanied by special instruction or directions, the duty of instituting may, I think, be imposed by rules." (G. R. 8262 of 30 Oct. 1869, G. D)

Delegation of power to direct.—Section 37 authorises the delegation by the municipality, in accordance with rules of any of its," powers, duties or executive functions " to the president, vice-president, chairman of committee * * * or to one or more stipendary or honorary officers."

General power to Secretary to prosecute.—"Though it may be desirable that a municipality should not delegate to its Secretary a general power to prosecute people, a conviction based on such a prosecution would not thereby be rendered illegal." See S. L. R. Vol. 1 p. 88 note 5 p. 324.

Prosecution instituted by authorised person cannot be withdrawn by municipality.—Under sec. 280 of the Madras Act the Municipality or the Chairman may expressly authorise a person to make a complaint for an offence under the Act. Under sec. 39-A the Council may deligate certain powers of the Chairman to the Secretary and once so delegated they cannot be withdrawn without the sanction of Government. Powers of Chairman under sec. 280 were delegated to the Secretary who then instituted certain criminal proceedings under this Act. The Council disapproving of this passed a resolution withdrawing the complaint and the Magistrate acquitted accused. *Held*, reversing the acquittal, as it was not open to the Council to pass the order. (*Paramanda Nadar* v. *Karunkara Doss* (1914) 23 Ind. Cas. 507.)

3 **May direct or order.**—*Prosecution not obligatory.*—It is always open to a municipality to obstain from directing a prosecution in any case in which it is thought undersirable to give such directions under sec. 82 (now 161). (G. R. 1910 of 13 May 1895, Gen. Dep.)

Under various other municipal Acts only municipality may prosecute.—The Bom. City Act, sec. 517 (1), provides that "the Commissioner may—(*a*) take, or withdraw from, proceedings against any person who is charged with—(*i*) any offence against this Act, (*ii*) any offence which affects, &c., the corporation or due administration of this Act; (*iii*) committing any nuisance whatsoever; (*b*) compound any offence against this Act, &c."

It was ruled in *Imp.* v. *Dr. Nadirsha*, Bom. H C. Cr. R. No. 45 of 1898.—"The only person empowered under this Act, to take proceedings against any person charged with an offence against this Act (s. 517), is the Municipal Commissioner" or other officer to whom he may delegate this function by writing in that behalf under sec. 68. When a complaint is not so instituted there can be no conviction, as it is not properly instituted."

The Panjab Act, sec. 186, is exactly the same, and adds an explanation as to who may be authorised by the Committee to prosecute, and that the authority must be in writing.

The Madras Act, sec. 280, provides that "no person shall be tried for any offence against the Act, &c., except upon complaint made by the Police or by the Municipal Council or by the Chairman, or by a person expressly authorised by the Council or Chairman. But nothing herein contained shall affect the provisions of sec. 191 of the Code of Criminal Procedure, 1882, in regard to the power of certain Magistrates to take cognisance of offences upon information received, or upon their own knowledge or suspicion."

Bengal Act, sec. 353, says "no prosecution shall be instituted without the order or consent of the Commissioners."

The N. W. Provinces and Oudh Act, sec. 69, provides "a Court shall not take cognisance of an offence punishable under this Act, * * except on the complaint of the municipal board or of some person authorised by the board."

The Berar Municipal Act of 1886 sec. 151 is also to the same effect, that it was *held* in *Narayen* v. *Emperor*, (6 N. L. R. 114; 1910, 8 Ind. Cas. 274) that this did not apply to an offence made punishable by the Act under the Indian Penal Code.

Chairman's general authority given verbally when not valid.—The proviso to sec. 45 of the Bengal Act, (which sets out that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman, shall be invalid for want or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained), cannot be considered as altogether overriding the body of the section, and relates only to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by a Chairman to a Vice-Chairman, to institute prosecutions under the Act, as such power can only, under the body of the section, be delegated by a written order.

"In a prosecution instituted by a Vice-Chairman for obstructing a drain where it appeared that the Chairman had some months previously verbally given the Vice-Chairman general authority to institute all such prosecutions under section 353 of the Act, and it appeared that a conviction had been obtained before a bench of Magistrates, and that on appeal to the Magistrate the conviction had been upheld, the Magistrate himself being the Chairman and hearing the appeal with the express consent of the accused, and where it was contended in revision before the High Court that although there was no written order by the Chairman delegating his powers, it must be taken upon the facts proved and the circumstances of the case that the prosecution had been instituted with the express or implied consent of the Chairman obtained both previously and subsequently within the terms of the proviso to section 45. *Held*, that the proviso did not apply to the case, that the prosecution had not been properly instituted and that the conviction and sentence must be set aside. (*Kheroda Prasad Paul* v. *Chairman, Howrah Municipality*, I. L. R. 20, Cal. 448.)

Chairman cannot direct prosecution unless authorised by Board.—In the case of *Queen-Empress* v. *Yusuf Khan* (I. L. R. 8, All. 477), which was decided under this section of the N.-W. Provinces Act, a District Magistrate who was also Chairman of a Municipal Board, having information that a certain person had evaded payment of octroi duty, directed his prosecution for breach of municipal rules. The Magistrate in thus causing proceedings to be taken, acted wholly of his own motion and authority, and accused was tried and convicted. *Held* that any rule made under the Act was subject to the provisions of that Act and among them to sec. 69 which made it a condition precedent to the institution of a prosecution against the accused, that there should be a complaint of the Municipal Board or of some person authorised by the Board in that behalf.

"*Held* also that the position of the District Magistrate in connection with sec. 69 was neither better nor worse than that of any other member of the Board, and unless he had been duly authorised by the Board as a Board, he had no more *locus standi* to cause a prosecution to be instituted personally than any other individual member; the words of sec. 69 being mandatory, and the petitioner having from outset urged this objection to the legality of the proceedings, he was entitled to the benefit of it now, and the conviction was illegal and must be set aside."

Under this Act any person may prosecute.—The omission from this Act of such express limitation as in these other Acts, would imply that the Legislature did not intend to restrict the right of prosecution to the municipality. The section as now framed merely enables a municipality to direct a prosecution for offences against the Act, and does not deprive any one else of any right to prosecute. The Sind Sadar Court in Criminal Application No. 7 of 1883, *Held* that because the last para. of sec. 31 (now sec. 94) provided that "any person may give information and institute a prosecution under this section," it could not be assumed that any perosn could institute a criminal prosecution under the old Acts of 1873 and 1884. The special authority therein conferred on the public generally

could only be exercised in cases falling under that section. The omission to give such authority in cases not falling under that section, showed that only persons duly authorised under sec. 82, could institute prosecutions in other cases.

But in this Act the words quoted are omitted from sec. 94, thus showing that the intention was not to place any restrictions under this Act.

Any person may prosecute.—"24. There is nothing either in the municipal Acts or in any other law requiring the sanction of the municipality to the institution of a complaint as to any offence against the Acts. Indeed, section 82 and section 68 of Bombay VI of 1873, evidently contemplate the laying of complaints on occasions when it would be impossible to await the authority of the municipality.

There is nothing as far as I can see to prevent any one from preferring a complaint that a municipal offence has been committed.

There is no section corresponding to section 253 of 38 and 39 Vict., C. 55, which prohibit the recovery of a penalty, except on proceedings taken by a party aggrieved or by the Local authority.

"25. But such a complaint would not be the complaint of the municipality nor would the municipality be responsible for the expenses arising therefrom, unless the municipality had ordered the complaint to be made or had authorised or ratified the expenses incurred.

"26. Section 82 of Bombay VI of 1873 gives the municipality power to direct any prosecution for any public nuisance.

This does not preclude any individual member of the public from exercising the ordinary right to complain of a public nuisance.

"27. It would not, however, be competent to any officer or servant of a municipality to institute on behalf of the municipality a prosecution for a nuisance unless such prosecution had been directed by the municipality. (G. R. 8262 of 30 Oct. 1889 Gen. Dep.)

Any person may prosecute.—Held that neither sec. 161 nor any other section of the Act either directly or indirectly takes away the ordinary power of the members of the public, having knowledge of the commission of an offence, to set the law in motion by a complaint. Exceptions to the rule must be created by statute *e. g.*, sec. 195 to 199 Criminal Procedure Code.

Private person may complain.—Sec. 82 (now 161) does not prevent a private person from making a complaint to the Magistrate in such a case, for instance, as where an offensive liquid was allowed to flow from the premises of accused into the street. (*Queen Emp.* v. *Bai Reva*, Bom. H. Court Crim. Application for Review, Nos. 354 and 556 of 1892. Un. C. C. 630.) Approves of *Emp.* v. *Mulchand* noted below.

Magistrate or Police may prosecute.—"In this case, the petitioner's cattle had been taken to the pound by the police, as they were found straying along the public roads without a keeper. The petitioner was subsequently prosecuted by the Police before a First Class Magistrate, who convicted and sentenced him to a fine of Rs. 25, under section 64 of the Act (now sec. 137). The petitioner argued that as the prosecution had not been sanctioned by the municipality under the section, the Magistrate was wrong in taking cognizance of the case.

"*Held* that this section does not deprive a Magistrate of the power conferred by sec. 191, Criminal Procedure Code, of taking cognizance of an offence upon complaint, or upon a Police report, or upon information, &c., or a Police Officer of the power conferred by sec. 23 of Bombay Act VII of 1867. The Judges add "We look upon sec. 82 as merely enabling a municipality to prosecute for offences against the Act, and not as depriving Police officers or Courts of any authority or jurisdiction conferred on them by any other law." (Bom H. C. Crim. Ruling No. 44 of 1887, *Imp.* v. *Mulchdnd Odhavdas*; *Pohumal* v. *Lokumal*, Sind S. C. R. C. Rev. 36 of 1895.) See Madras Act, sec. 280, noted above.

A Magistrate, duly empowered under the Code, can take cognizance of such offences on a complaint of facts, irrespective of any complaint by the municipality. (*Vide* Bom. H. C. Crim. Rul. 44 of 1887 noted p. 311). The ruling in Sind Sadar Court Criminal application 7 of 1883 was on a construction of sec. 31 of the old Act which contained a special para. which has now been omitted from sec. 94. The ruling in Bom. H. C. Cr. Rul. 45 of 1898 noted *supra* was on the special provisions of sec. 515 of the City Act. (*Imperator* v. *Hasomal Shamdas*, Sind Law Reporter Vol. I, Crim. Cas. 88.)

Sanction must be in writing.—The only evidence of sanction of prosecution of a public authority is a writing under the signature and seal of that authority. *Held* also that certain "Forms of prosecution" were not proper sanctions and the conviction was squashed. The writing must show the sanction of the sanctioning authority and not merely that the complainant has got the sanction. (*Rasul Baksh* v. *Municipal Board of Chupra* (19) 16 C. W. N. 934; 15 Ind. Cas. 796.)

Government sanction when necessary, vide note 3 sec. 45 page 115.

Municipal sanction not necessary.—This section does not require that the sanction of the municipality should be obtained before a councillor can be prosecuted under sec. 45 (now sec. 44) of the Act of 1884. It merely empowers the municipality to conduct prosecutions and defray expenses, and does not bar prosecutions under the Act by Government or other persons. (G. R. 752 of 9 March 1888, Gen. Dep.)

When appeal lies against the order, disobedience of which is an offence, the C. P. Act, sec. 123, provides that when the Magistrate learns that an appeal has been instituted, the prosecution should be suspended, pending the appeal.

4 **"Direct—order."**—The Act does not say how this is to be done, but as the Magistrate must be satisfied that the prosecution is duly instituted, it would seem that the direction or order must be in writing and produced with the complaint when presented. This is in accordance with the Panjab Act. See 16 C. W. N. 934, note 3, *supra.*

Legal advice.—Municipalities, who are in no way Government officers, and whom the Legislature has placed in matters within their jurisdiction, in an independent position, should as a general rule be left, like similar bodies at home, to defend the legality of their own proceedings, and not be allowed to call on Government to inquire into the merits of every individual case in which the propriety of their decisions may be arraigned.

In complicated cases, where the legality of the proceedings which form the grounds of action may be open to grave doubts, a reference may be made to Government to obtain the opinion of the Legal Remembrancer, but this cannot be necessary in trivial cases.—G. R. No. 2612, November 5th, 1859.

It is no part of the duty of the Law Officers of Government, whether the Solicitor to Government or the Remembrancer of Legal Affairs, to give legal advice to municipalities. It is the duty of such bodies to obtain legal advice at their own cost. (G. R. 3763 of 21 Sep. 1882; 4643 of 5 Dec. 1885; 811 of 1 March 1886; 836 of 25 Feb. 1889, Gen. Dep.)

Appeals to Privy Council.—The Government of India in their letter No. 1274, dated 9 September 1889, pointed out among other things, that when an appeal to which a municipality is a party is preferred to the Privy Council, the duty of making arrangements for the conduct of the case must be undertaken by the municipality concerned. This decision should be communicated to all municipalities. (G. R. 4372 of 21 Oct. 1889, Gen. Dep.)

5 **"Prosecution for any public nuisance."**—See, note 2 *supra.* As public nuisances may be prosecuted either civilly or criminally, the word "prosecution" here is probably used in its wider sense, though in sub-sec. (2) it is used in the restricted sense of a criminal proceeding. Hence these prosecutions for public nuisances may be under the Penal Code or the Civil law. As a public nuisance is not "an offence under this Act," the 6 months limitation does not apply to such a prosecution whether criminally or by Civil suit. See note 10.

Public nuisance.—See note 9, page 179.—Indian Penal Code, sec. 268, says "a person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage."

The Bom. City Act provides sec. 515 (1), "Any person who resides in the City, may complain to a Presidency Magistrate, of the existence of any nuisance or that, in the exercise of any power conferred by secs. 224, 241, 246 or 367, (corresponding to secs. 108, 52 and 127 respectively) more than the least practicable nuisance has been created.

"(2) Upon receipt of any such complaint, the Magistrate, after making such inquiry as he thinks necessary, may, if he sees fit, direct the Commissioner—

(*a*) to put in force any of the provisions of this Act or to take such measures as to such Magistrate shall seem practicable and reasonable for preventing, abating, diminishing or remedying such nuisance.

(*b*) to pay to the complainant such reasonable costs of, and relating to, the said complaint and order as the said Magistrate shall determine, inclusive of compensation for the complainant's loss of time in prosecuting such complaint." Right to recover damages for injury by such acts is expressly reserved.

6 **"Proceedings for recovery of penalties."**—As these penalties are only those under this Act, and by sub-sec. 2 (2), read with sec. 164, they can only be recovered on application to a Magistrate, it follows that such a proceeding is a criminal prosecution.

It is not apparent why therefore the word 'proceedings' has been used here, when it might have been simpler to have said "the municipality may direct any prosecution for any public nuisance whatever, and for the recovery of any penalties."

Such a proceeding being a "prosecution for an offence under this Act," the limitation of 6 months would apply. See note 10.

7 **"For the punishment of any persons."**—As this punishment can only be by a prosecution for levying the penalty prescribed in each case, it does not appear why it was not sufficient to add after the word "penalties," the words "imposed under or by virtue of this Act or of any by-laws thereunder."

8 **"Offending against the provisions of this Act."**—*False returns—Municipality no power to proceed under Penal Code.*—"The Bengal Municipal Act, 1884, gives power to levy a tax on horses, &c. sec. 133 requires the owner of the taxable thing to send in a statement in writing of the horses, &c., liable to the tax for which he is bound to take out a license, on receipt of which and the money, the municipality are bound to give the license; and sec. 137 imposes a penalty for keeping a horse or taxable thing without a license.

"C sent in a statement for 2 carriages and 6 ponies. The municipal overseer on verification reported he had 8 ponies and one horse. The Chairman directed his prosecution for (*a*) giving false information sec. 182, Penal Code, or (*b*) making a false statement on a declaration, sec. 199, or (*c*) attempting to cheat, sec. 415, Penal Code.

"*Held* that the powers of the municipality were restricted by sec. 352 of the Act to the prosecution of offences created by that Act, and therefore had no power to institute proceedings under the Penal Code. The facts could not in law constitute the offences charged. The municipal Act is intended to be complete in itself as regards offences committed against the municipality, and there is no indication of any intention to render a delinquent, also liable to punishment under the Penal Code. There is no penalty in the Act attached to the omission to make a return under section 133, and no words in the Act constituting the making a false return a penal offence; and as there are no such words in the Act as are necessary to make the provisions of the Penal Code applicable, the Court has no power to import them. The municipality in such a case have the remedy provided by the Act itself, and are not entitled to go beyond it." (*Chandi Pershad* v. *Abdur Rahman*, I. L. R. 22 Cal. 131.) See note 15 sec. 48.

9 **"Or of any by-law thereunder."**—These words have been inserted to supply an omission, for it is obvious that there is a distinction between penalties or offences under the Act, and those under the by-laws. This is also recognised in sub-sec. (2) which refers to "prosecution under this Act or under any by-laws" and "fine or penalty imposed under this Act or any by-law thereunder," thus obviously implying that the former does not include the latter. The same distinction was observed in 5 and 6 Will 4, ch. 76, sec. 91, which stated that all the provisions thereinafter contained relative to offences *against the Act* shall be taken to apply to all offences committed *in breach of any by-law* or regulation made by virtue of the Act.

By-laws must be duly framed and sanctioned.—"Accused was convicted under sec. 84 for non-payment of house tax. *Held* that as admittedly the municipality had not framed any rule or by-law for the sanction of Government as required by this Act, the conviction was illegal." (*Queen Emp.* v. *Lakshman*, Bom. H. C. Crim. Ruling 21 of 1894.)

10 **In what cases limitation applies.**—This proviso applies to "(1) a prosecution, (2) for an offence, (3) under this Act." It would not therefore apply to a prosecution for any public nuisance, (note 5); nor to one under the by-laws, (note 11); nor to proceedings for recovery of taxes in cases where sec. 88 applies, (note 14); nor for recovery of "claims for compensation and other expenses" (note 16); nor to any civil proceedings under sec. 164, nor against an officer of a municipality not in his capacity as such officer but as an individual.

Municipality cannot extend limitation period.—Where a notice under sec. 408 of the Calcutta Act was served on the owner of a bustee on the 3rd March 1906, directing certain improvements within three months from its date, but the owner failed to comply with it and served a notice under sec. 419 of the Act on the 2nd July, whereupon the Corporation gave her further time till the 2nd January 1907, and instituted a complaint on the 23rd January for non-compliance with the terms of the notice of the 3rd March 1906.

Held that the three months having expired on the 2nd June 1906, the offence was committed on the next day, and the prosecution, which should have been instituted within 3 months of the date of the offence, *viz.*, 3 Sept. was, therefore, barred under sec. 631; and that the notice under sec. 419 (which, to be effectual, must be served before the offence is committed,) and the extension of time by the Corporation, both being after the date of the offence, were ineffectual in extending the period of limitation. (*Kumud Kumari Dassi* v. *Corporation of Calcutta*, I. L. R. (1907) 34 Cal. 909.)

Continuing offences.—See note 3 p. 270 and notes to s. 109 and 110. The Bengal Act s. 353 provides that if the offence is continuous in its nature, limitation counts from the date on which the commission or existence of the offence is first brought to the notice of the Chairman.

Failure to take out license a continuing offence.—Sec 631 (2) of the Calcutta Act provides that "failure to take out a license under this Act shall be deemed for the purposes of limitation to be a continuing offence until the expiration of the period for which the license is required to be taken out."

11 **"Offence under this Act."**—The imposition of a penalty constitutes an act an offence. A penalty may be imposed for breach of a by-law (see sec. 48 (1), page 133, so such breach would be an offence, but it would be under a by-law and not "under this Act." Prosecutions for breaches of by-laws or recovery of penalties thereunder are not therefore subject to this limitation (see note 9). The omission of the words "or any by-law thereunder" is probably accidental. The corresponding section of the Bengal Act, sec. 358, provides "no prosecution for an offence under this Act or any by-laws made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted, except within three months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within three months of the date on which the commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners. Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out."

Imprisonment in default of payment of penalty.—By sec. 40 of the Indian Penal Code, the word "offence" as used in Chapter IV and secs. 64, 65, 66, 67, 71, 109, 110, 112, &c., &c., of that Code denotes a thing made punishable under this Act. Chapter IV relates to "general exceptions." Sec. 64 provides that "in every case of an offence punishable * * * with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term." Sec. 67 provides that the imprisonment shall be simple, and fixes the scale of imprisonment according to the fine imposed, *viz.*, not exceeding 2 months when fine does not exceed Rs. 50; not exceeding 4 months when fine does not exceed Rs. 100, and for any term not exceeding 6 months in any other case. Secs. 109—117 are as to abetment of offences, and the remaining sections relate to various offences, which see. See also note 16, as to application of secs. 68, 69 and 70 I. P. C.

Award of imprisonment in default of payment of fines is quite legal. (Bom. H. C. Cr. Ruling, 21 June 1879. *Reg.* v. *Gulabchand.*)

There is no distinction between the word "penalty" as used in Bombay Act of 1873 and the word "fine" as used in section 64 of the Indian Penal Code. Imprisonment can, therefore, be awarded in default of any penalty inflicted under section 84 of that Act. (*In re Lakmia*, I. L. R. 18, Bom. 400.)

As to imprisonment in default of payment of a daily fine see 15 C. W. N. 906, note page .

Madras Act, section 286, provides that in case any fine, compensation, penalty, or costs, imposed by a Magistrate under the Act or its by-laws is not paid forthwith, the Magistrate may order the party to be apprehended and detained in custody until the return can be conveniently made to a warrant of distress, unless security be given for appearance; and if no sufficient distress can be had, or there be not sufficient property whereupon the fine, &c., can be levied, the offender may be imprisoned.

Offences under Act are summons and bailable cases—By section 4 (*o*), Criminal Procedure Code, "offence" means, any act or omission made punishable by any law for the time being in force. By clause (*r*) read with the 2nd Schedule, offences under this Act, being "offences against other laws punishable with fine only," are bailable, and summons should ordinarily issue in the first instance.

12 **"Institute."**—This must be in accordance with Chapter XVI of the Criminal Procedure Code, sections 200—203. The complaint, if not presented in writing, must be reduced to writing by the Magistrate by examination of the complainant upon oath, otherwise the Magistrate is not competent to issue a summons. (6 Mad. H. C. Rep. App. 49.)

Frivolous complaint.—"If a municipal peon under the sanction of a municipality, makes a frivolous complaint, he may be ordered to pay compensation under section 250 of the Criminal Procedure Code, 1898. Such a case differs from that of *Keshav Lakshman*, I. L. R. I. Bom. 175, as there the complaint was preferred by a Judge acting judicially. An executive body cannot authorise a servant to prefer a wrongful complaint and so screen the complainant from the legal penalty." (Bom. H. C. Crim. Ruling No. 61 of 11 Nov. 1886. *Imp.* v. *Bhima wife of Dhondi.*)

Court fees payable—not on complaint—but for processes.—Under sec. 19, clause 18, Court Fees Act VII of 1870, no Court fee is leviable on a complaint preferred by a Municipal Officer.

Court fees are however to be levied for processes, summons and warrants, issued in cases coming under sec. 161, such fees being, on conviction of accused, recovered from him under sec. 31 of that Act. (G. R. 3528 of 29 June 1892, Jud. Dep. Bombay High Court Rules, Chapter II, rule 9, note 2. *Bombay Govt. Gazette* of 31 July 1902, page 1238. G. R 4905 of 5 Aug. 1893, Jud. Dep.)

G. R. 3528 of 29 June 1892, Jud. Dep., pointed out that in some municipalities a large portion of the time of the police was taken up with serving municipal processes and therefore suggested that the Act should lay down the liability of Municipalities for police charges. G. R. 2352 of 5 July 1893, Gen. Dep., did not think this desirable at the time. Now under this new Act, the police will be relieved of much of this work as in most of these large municipalities the provisions of Chapter VIII will be in force.

"No process fee is leviable on complaints made by municipal officers, and the accused are not liable to refund sums illegally levied from the complainants as process fee." (*Imp.* v. *Khajabhoy*, I. L. R. 16, Mad. 423.) With reference to this ruling G. R. 8186 of 28 Dec. 1893, Jud. Dep., points out that though under the Madras Rules, no process fee would be leviable on processes issued in municipal cases, it has no application whatever to fees levied in accordance with Rules made by a High Court, under section 20 of the Court Fees Act for the service and execution of processes issued by Criminal Courts.

13 **"Within 6 months."**—Under the old Act, the time was "3 months;" this was found by experience to be too short, as sometimes papers were being in circulation, or were purposely kept back. This amendment was also necessary, as offences of the nature contemplated, for instance in sec. 44, are not likely to be discovered for a considerable time or to be established without lengthy enquiry, and a limitation of 3 months for their prosecution must, in the majority of instances, prevent the punishment of the offender.

Under the Bom. City Act, sec. 514, the limitation is 3 months, except for offences against the provisions of sec. 155 (corresponding to sec. 63 (3) of this Act), when the time is 6 months.

In Sind Sadar Court Criminal Report No. 38 of 1898 under the old Act, it was *held* that the period of limitation, in case of a prosecution to recover certain expenses incurred by and due to a municipality under sec. 75 of Bombay VI of 1873 (now 154 (6) (should be taken as commencing on the date of municipal demand, or if in that demand a time was fixed within which the payment might be made, then from the expiration of that time.

Under Madras Act, sec. 269-A, the limitation is 3 years from the date upon which the prosecution might first have been commenced. The prosecution under sec. 103 (2) of that Act is optional in default of distraint or sufficient distraint.

14 **Jurisdiction of Magistrate.**—This sub-section is taken partly from sec. 84 of the old Act of 1873, with some important alterations.

"*Any Magistrate.*"—"Magistrate" means any person exercising magisterial powers under the Code of Criminal Procedure. (Bombay General Clauses Act, sec. 3, Cl. (28).

The words in the old Act, "whether the said Magistrate be a municipal commissioner or not," have been omitted, as this was sufficiently provided for by the Criminal Procedure Code, sec. 556.

By section 261 of the Criminal Procedure Code, 1898, the Local Government may confer on any Bench of Magistrates of the 2nd or 3rd class power to try summarily—

"(*b*) Offences against Municipal Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of such offences.

(*d*) An attempt to commit such offences when such attempt is an offence."

When Magistrate may not try.—By section 556 of the Crim. Pro. Code, it is provided that "No Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party or personally interested and no Magistrate shall hear an appeal from any judgment or order passed or made by himself.

"Explanation.—A Magistrate shall not be deemed to be a party or personally interested within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner."

"The Municipal Commissioners of Ammillah at a meeting issued an order under the Bengal Municipal Act. Accused was tried and convicted by the District Magistrate under sec. 188 of the Indian Penal Code for disobeying such order duly promulgated by a public servant.

"On enquiry it was found that the District Magistrate who tried and convicted accused, was present as Chairman of the Municipal Commissioners at the meeting, when the order was passsd, for disobedience of which accused was convicted.

"*Held* that the conviction was illegal and must be set aside, Prinsep, J., remarking when delivering judgment. "The explanation to section 556 of the Criminal Procedure Code, does not, in our opinion, apply to any case in which a Magistrate may have been personally concerned as a Municipal Commissioner in the matter which forms the subject of trial before him. It was rather intended to prevent an objection being raised that from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different matter when in the present case we find the Magistrate is practically one of the prosecutors and the Judge." (*In re Kharak Chand Pal* v. *Tarack Chander Gupta*, I. L. R. 10 C. 1030.)

"An appeal against a conviction under sec. 217, clause 5, of the Bengal Municipal Act (Bengal Act III of 1884), was preferred to the District Magistrate, who was also chairman of the municipality. On an application to the High Court for a transfer to the Court of some other Magistrate. *Held*, that apart from the question whether there was a disqualification under section 556 of the Criminal Procedure Code, the case was one which it was expedient should be transferred to another Court.

"Per Banerjee J.—Section 556 of the Crim. Pro. Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal." (*Nistarini Debi* v. *Ghose* I. L. R., 23 C. 44.)

"Notwithstanding anything contained in sec. 556 of the Code, a conviction for an offence against any municipal law or regulation, tried before a Bench of Magistrates which includes a salaried officer of a municipality is bad." (*Nobin Krishna Mukerji* v. *Chairman, Suburban Municipality.* I. L. R., 10, C. 194.)

When collector of municipal taxes.—"As B, though a Justice of the Peace, was a servant of the prosecutor, *i. e.*, the Corporation, he being employed as collector of taxes under the municipality, he had such an interest as might give him a bias in the matter, and consequently he ought not to have sat as Justice of the Peace either at the granting or hearing of the summons, the proceedings and conviction were therefore illegal." (*Wood* v. *Corporation of Calcutta*, I. L. R., 7, Cal. 322.)

"Although sec. 84 of Act VI of 1873 enables a Magistrate who is a member of the municipality to deal with a prosecution instituted by the municipality, that section is only permissive and does not directly authorise him to try a civil case in which the municipality is interested as plaintiff or defendant, and does not mitigate against the general principle that a Magistrate or Judge should not himself try a case when the circumstances show that he may have a bias in favour of either party." (*Vinayah Chimtaman Tilekar* v. *the Municipality of Bani.* P. J. 1897, p. 107.)

Municipality may not try.—"The Managing Committee have no power to try and convict persons for alleged breaches of rules made in pursuance of the Act. The power to inflict fines for such offences is vested in the Magistrate."—*Reg.* v. *Mavji Dayal*; *Reg.* v. *Kalidas Keval*, 5 *Bom.* H. C. R. 10 Cr., Ca.

"Municipal Councillors have not conferred upon them, nor are they entitled to assume judicial powers with reference to breaches of rules or by-laws made by them under the Act. *Reg.* v. *Kulidas Keval* approved and followed. The authority to try offenders against such rules or by-laws is vested in the Magistrates, *Reg.* v. *Dhanmaya Songapa*, 8 Bombay H. C. R., Ca., 12 approved. Rules made under the Act, which purport to give the Managing Committee power to try offenders against such rules or to lay fines upon them, are *ultra vires* and illegal. (*Reg.* v. *Yenku Bapuji* 8 Bom. H. C. R. Cr., Ca., 39.)

Who may appear for accused.—A woman was charged with causing obstruction under section 48. She having gone to a village, her mother-in-law appeared in Court on her behalf, and the Magistrate proceeded with the case and convicted her. *Held* that the conviction must be set aside as the accused was neither present nor duly represented in the case. (Bom. H. C. Crim. Ruling of 7 Aug. 1884, *Imp.* v. *Vithi.*)

A woman was charged with the offence of fouling water under section 61. She being unwell, her father-in-law appeared in Court on her behalf, and the trying Magistrate proceeded with the case and convicted her. *Held* that the father-in-law might probably have

been received by the trying Magistrate as a person appointed by her to act in the proceedings before him consistently with section 4 of the Code of Criminal Procedure, 1898, and the High Court did not consider it necessary in so trivial a case to make any order. (Bom. H. C. Crim. Ruling of 7 Aug. 1884, *Emp.* v. *Chandra Bhoog.*)

Transfer of case.—Application was made for transfer from the Magistrate's Court to the Sessions Court, of a case under sec. 84 of the old Act of 1873 for recovery of arrears of taxes by a summary proceeding, on the ground that important points of civil law were required to be decided. *Held* that in making this special provision for recovery by summary proceedings, the Legislature did not appear to have contemplated the transfer of such cases to higher Courts. (Sind Sadar Court, Criminal Application No. 47 of 1898.)

"*Any prosecution under this Act*".—Section 88 provides for the recovery of taxes under this section on application to any Magistrate in any municipal district in which the operation of sections 83 and 84 has been suspended. There is no limit to the time within which such application may be made, as the proviso sub-sec. (1), does not apply, (see note 10).

Magistrate, municipal councillor and editor who commented on case.—Accused was convicted and fined under a bye-law, by an Honorary Magistrate who was a municipal councillor and also the editor of a newspaper and who had, prior to the disposal of the case, made very strong remarks on the case in his newspaper. The High Court held that there was nothing illegal, though the Magistrate would have exercised a wiser discretion if he had refused to sit as one of the councillors in the case. (*Queen* v. *Tarine Chain Bose* (1874) 21 W. R. C. R. 31.)

Magistrate, President who ordered prosecution.—Where a magistrate as President of a municipality presided at a meeting which ordered the prosecution of the accused, he must be deemed to be personally interested within the meaning of section 556 Criminal Procedure Code, and therefore he could not himself try the case.

The expression try any case in the section is wide enough to include a proceeding under section 437 Cr. P. Code directing further enquiry into the case against accused. *Queen* v. *Milledge* (1879) L. R. 4 Q. B. D. 332; *Queen* v. *Lee* (1882) L. R. 9 Q. B. D. 394; I. L. R. (1910) 32-A. 77 followed (*Imp.* v. *Bhojraj* 5 Sind, L. R. (1911) 137.)

Magistrate, Vice-president and Chairman, Managing Committee who sanctioned prosecution.—The mere fact that a Magistrate is the vice-president of a District Municipality and Chairman of the Managing Committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as, for instance, by concurring in sanctioning it at a meeting of the Managing Committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by very Municipal Commissioner in the affairs of the municipality. *The Queen* v. *Lee* 2 Q. B. D. 394 and *The Queen* v. *Handsley* 8 Q. B. D. 383, followed, 15 Mad. 50 and 10 C. 194 and 1030 not inconsistant with this ruling, (*Queen-Emperor* v. *Pherozsha Pestonjee* (1893) 18 B. 442)

Panjab Act, sec. 188, provides that no Judge or Magistrate shall be deemed to be a party or personally interested in any prosecution, within the meaning of sec. 556, Crim. Pro. Code, "by reason only that he is a member of the committee by the order, or under the authority, of which it has been instituted." If however he is actually present at the meeting when order passed, he would apparently be disqualified.

The Bom. City Act, sec. 513, provides that all offences under the Act, regulations or by-laws, whether committed within or without the city, are cognisable by a Presidency Magistrate, "and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence, by reason of his being liable to pay any municipal tax, or his being benefitted by the municipal fund to the credit of which any fine inflicted by him will be payable."

These provisions are based on the law in England where the Statute 30 and 31 Vict. Chap. 115 "Justices of the Peace Act, 1867" provided that "A justice of the peace shall not be incapable of acting as a justice * * * on the trial of an offence arising under an Act to be put in execution by a municipal corporation, * * * or other local authority, by reason only of (*a*) his being as one of several rate-payers, or as one of any other class of persons liable in common with others to contribute to or to be benefitted by any fund to the account of which the penalty payable in respect of such offence is directed to be carried or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go." This provision was based also on 22 and 30 Vict., Chap. 41, sec. 2. See also the Municipal Corporation Act 5 and 6, Will 4, Chap. 76, sec. 128.

In *Reg.* v. *Handsley*, 8 Q. B. D., 383, it was held that when by Statute a member of the Council of a borough may act as a Justice of the Peace in matters arising under the Act (34 and 35 Vict., C. 154) in order to disqualify him from so acting, it is not sufficient to show that, as a member of the Council, he has a pecuniary interest in the result of the information

or complaint, or that the Corporation of which he is the member, are the prosecutors; but it must be established that he has *such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.*

In *Rex.* v. *Milledge* 4, Q. B. D. 332 and *Reg.* v. *Lee* 9 Q. B. D., 394, it was held that when a Councillor has taken part *in passing a resolution directing a prosecution* he is disqualified from acting as a Justice in respect thereof.

In *Reg.* v. *Justices of Great Yarmouth* 8 Q. B. D. 525, the Mayor of Yarmouth was the Chairman of the Magistrates at a special sessions for appeals against poor rates and was himself an appellant in one of the cases. After taking part in the decision of the other cases, he left the bench, when his own case came on and conducted it himself. On a *certiorari* to bring up all the orders for the purpose of quashing them, *held*, that the chairman being a litigant in a case similar to the other cases before the Court, was disqualified from acting as a Justice and that the orders were bad. In this case the disqualification arose out of a personal and pecuniary interest.

In the case of *Reg.* v. *Mayor and Justices of Deal*, 45 L. J. N. S. 439, the petitioner had been convicted and fined for cruelty to a horse upon the prosecution of an officer of the Society for the Prevention of Cruelty to Animals. Some of the Justices who took part in the conviction were subscribers to a branch of the said society. *Held*, upon a rule for a *certiorari*, that there was nothing in these facts to create a real bias in the minds of the Justices which could amount to a disqualifying interest.

"Section 263 of the Madras Act provides a penalty for the doing of an act without a license or permission where such license or permission is necessary, and section 264 for failure to comply with notice. A trial on a charge for making an encroachment was begun before a Bench of 7 Magistrates, and ended in a conviction by 5 in the absence of the other two. It appeared that the municipality had passed no resolution under section 264. *Held* that on the facts, the conviction under section 263 was right, and was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. I. L. R. 20, Cal. 870 and 23 Cal. 194, distinguished.

"*Quare*:—Whether a charge, under section 264, would lie in the absence of a resolution by the municipality." (*Karuppana Nadan* v. *Chairman, Madura Municipality* 21, M. 246.)

Jurisdiction of Magistrate.—*How far can a Magistrate question the correctness of a municipal claim?*

(1) In respect of a tax levied under sec. 63 to 65, assessment on buildings or land.

(2) „ „ „ other taxes and claims.

As to (1) there is no doubt he cannot question the amount of the tax. He can only enquire as to the legality of it, whether it is *ultra vires*. See note 9 sec. 65 page 224.

As to (2) the same principle applies, so long as the claim is made in accordance with the requirements of the Act and rules, it cannot be questioned. The law vests the municipality with a discretion as to whether the circumstances justify the claim and the Magistrate cannot enter into the question of the merits of it. He can only enquire as to whether it is *ultra vires* that is, in excess of or contrary to the powers vested in the municipality under the Act and rules.

(1) **As to taxes.**—"A Magistate acting under this section acts judicially and not ministerially. Before he issues any warrant for recovery of any of these fines, penalties or arrears, he is bound to make a preliminary enquiry as laid down in the Criminal Procedure Code; without such enquiry he cannot on the mere application of the municipality, recover the arrears, &c. The Legislature intended by this section that the Magistrate alone should be the judge of the justice of the demand and should be in a position to check illegality or oppression." This point is very fully discussed in the learned Judge's judgment in the above case which see, and in which occurs the following passage:—

"Independently even of express legislation to the effect, it is a general rule of English law that when a Magistrate grants a warrant in the nature of execution, he is bound first to summon and hear the party against whom it is sought, unless the statute under which he acts renders it perfectly clear that his function is ministerial only, or in some other manner dispenses with the summons and hearing. There is no provision in this Act dispensing with a summons and a judicial hearing in cases coming under this section." (*The Shikarpur Municipality* v. *Ganumal Bhairumal and others.* Sind Sadar Court Crim. Ref. No. 27 of 1881.) See also I. L. R. 9 Cal. 38, note 1, sec. 122, page 321.

"Where in a prosecution for the recovery of a tax, the defence is raised as to the proper amount to be paid, the Magistrate is bound to determine the question of liability of the accused including that part of the liability which depends on the amount of the earnings. It is nowhere provided in the Act or in the rules that the statement of the municipality is to

be accepted as proof of the amount of the earnings." (*Imp.* v. *Nathu.* Bom. H. C. Cr. Ruling No. 38 of 1891.)

"A proceeding before a Magistrate for the recovery of municipal cesses and taxes instituted under section 84 of Bom. VI of 1873, is a criminal prosecution, and must be conducted in the manner prescribed for summary trials under Chapter 22 of the Code of Criminal Procedure. In such a proceeding, a Magistrate is not bound to order payment of the full amount claimed by the municipality, but must satisfy himself as to the extent of the defaulter's legal liability before passing any order against him." (*Municipality of Ahmedabad* v. *Jumna Punja*, I. L. R. 17 Bom. 731; Bom. H. C. Crim. Rul. No. 5 of 1891.)

Note.—As explained in I. L. R. 23 Bom. 446 (noted *infra*) these rulings are correct except so far as they say or imply that the Magistrate can also enquire as to the correctness of the amount of assessment. This was before sec. 65 (6) came into force, and in so far they are not now applicable. See also remarks in I. L. R. 22 All. 111.

Magistrate cannot go behind assessment as to valuation.—The municipality applied to a magistrate under section 84 Bombay Act VI of 1873 to recover arrears of house-tax due. The party taxed contended that there was an over-valuation and magistrate went into the question whether the tax had been properly assessed. High Court held he had no power to do so. The only remedy under the Act was for the party to appeal to the managing committee. Bom. H. C. Cr. Ruling 35 of 1891 and I. L. R. 17 Bom. 731 distinguished as there the Act made no provision for the mode in which the municipality was to determine the amount of the tax nor for a party to contest it. (*The Municipality of Wai* v. *Krishnaji* (I. L. R. (1899) 23 Bom. 446: Bom. H. C. Cr. Ruling No. 33 of 1898.)

Madras rulings.—Under the Madras City Act, the Magistrate appointed to hear appeals from municipal assessments had jurisdiction to decide not only the question of liability of a person taxed, but also the class under which he was made liable, but the Magistrate before when a prosecution is instituted for recovery of the tax can only and must go into the question whether the person is liable to be taxed. Section 208 of the Act takes away the remedy by civil suit provided that the directions of the Act are in substance and effect complied with. (*Davies* v. *President, Madras Municipal Commissioner*, I. L. R. (1891) 14 Mad. 140.)

In I. L. R. (1911) 34 Mad. 130 (noted page 257) held that the Magistrate could not even go into the question of liability, as plaintiff, not having taken the remedy provided by the Act to deal with this question, could not dispute it subsequently. 14 Mad. 140 distinguished as there plaintiff did take the remedy available under the Act so the question whether if he had not done so he could still insist upon the question of his liability being gone into on the prosecution did not arise.

Bengal and other rulings.—*Finality of municipal decision as to 'class' not as to liability.*—"*Held* that the finality of the decision of the Chairman referred to in sec. 79, Ben. Act IV of 1876, had only reference to the class under which a particular person, who is admittedly bound to take out a license should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under sec. 77, and that therefore the refusal to hear the evidence tendered was illegal." (*Wood* v. *Corporation of Calcutta*, I. L. R. 7 Cal. 322.)

Magistrate not to enquire whether arrears due.—In *Ellis* v. *Municipal Board of Mussorie* (I. L. R. (1899) 22 All. III) it was held that the Magistrate acting under section 46 All. No. XV of 1883 in realising arrears of municipal taxes from an alleged defaulter was acting ministerially only and had no jurisdiction to enquire whether such arrears are really due or not. I. L. R. 17 Bom. 731, distingnished as the words in the Bombay Act imported a judicial determination.

"If a municipality apply to a Magistrate for recovery of taxes, *held* that—

(1) it is not competent to the Magistrate to refuse to act, his power being limited to finding whether the amount is "claimable" or not; and if he finds it is so claimable, he is bound to proceed in the manner indicated by the section;

(2) the Magistrate should satisfy himself that the committee applying is legally constituted, and that the amount claimed is claimed under a tax or assessment legally imposed but it is not competent to the Magistrate to go into the merits and investigate the details of the sum claimed, the remedy in this respect being by appeal under sec. 49 of the Act.—" No. 1 P. R., 1891 *Crim.*

Magistrate to enquire whether claim intra vires but not whether, arrears are due.—The Panjab Municipal Act XX of 1891 sec. 201 provides that "any arrears of any tax or fee or any other money *claimable* by a committee * * * may be recovered, on application to a Magistrate &c. *Held* that the Magistrate, if the power is raised, must satisfy himself that the

Committee is illegally constituted and that the amount is '*claimable*' as legally imposed, *i.e.*, whether the claim is *intra vires* or *ultra vires*, although the Magistrate is not competent to enquire whether the amount claimed, under a tax duly and legally imposed and said to be in arrear, is due or not; the remedy as to that lies under sec. 52 of the Act by way of appeal. The word 'due' is distinguishable from the word "claimable." 1 P. R. 1891 followed. I. L. R. 22 A. 111, 17 B. 731, 23 B. 446, 1 M. 158, 13 M 78, 4 P. R. 1887 Cr. *Musammat Jafaran* v. *Empress*; 90 P. R. 1898, *Badri Das* v. *Muncipal Committee Delhi*; 27 P. R. 1889 Cr. *Emperor* v. *Khubi Ram* referred to. *Held* that the municipality could not by extending its octroi limits make goods within the extended part liable to duty, as such goods cannot be said to have been "brought within the octroi limits." (*Kanhya Lal* v. *Emperor*, 100 P. L. R. 1900; 23 P. W. R. 1909 Cr.; 2 P. R. 1910 Cr.; 1909, 4 Ind. Cas. 951.)

15 **"Fine or penalty."**—These words are synonymous. See note 9 *supra*.

The proceeds of these fines and penalties are given by Government to the municipality concerned. The expenses, if any, which under the rules in force have to be paid on the part of Government to complainants and witnesses, must be defrayed by the municipality in any case in which, if the Court inflicts a fine on the accused, the proceeds of such fine will be credited to the Municipal Funds. (G. R. 3517 of 26 Sep. 1834, Gen. Dep.)

By section 12 of the Bombay General Clauses Act, "the provisions of sections 68 to 70, both inclusive, of the Indian Penal Code, shall be deemed to apply to every fine imposeable under any enactment of the Governor of Bombay in Council, unless a contrary intention is expressed in the enactment or appears from the subject or context."

Section 68 provides that "the imprisonment which is imposed in default of payment of a fine shall terminate, whenever that fine is either paid or levied by process of law." Section 69 provides for the termination of the imprisonment upon payment of proportionate part of fine. Section 70 provides that the fine may be levied within six years, and that the death of the offender does not discharge property from liability.

See note 11 as to application of other sections of the Penal Code.

The Act makes no difference in the recovery of fines or penalties under the Act or those under by-laws. It may be noted that by the common law of England, penalties under by-laws are ordinarily only recoverable by an action of debt or *assumpsit*, and that an indictment does not lie with regard to them.

16 **"And also all claims to compensation, &c."**—These words down to "in this Act" are new, and are substituted for the following provisions in the old sec. 84:—"as also upon information laid by order of the municipality, all arrears of cesses or other taxes, and such penalties in addition to the said arrears, not exceeding in any case one-fourth of the amount of the arrear, as shall be adjudged by the said Magistrate, and all arrears of stallage and other rents and fees and all expenses."

Taxes, &c., are now recoverable, under the special provisions of Chapter VIII which allows only appeals to a Magistrate. In municipalities in which the operation of secs. 83 and 84 is suspended, the taxes are recoverable in the old way under this section. (See sec. 88.)

Arrears of taxes and compensation or expenses not otherwise recoverable under Act—(1) Such are not subject to the 6 months limitation.—The provision of the penalty was held in *Imp.* v. *Karam Shankar* (Bom. H. C. C. R. 86 of 3 Dec. 1888), to make a failure to pay arrears of taxes an offence under the Act, and therefore (*vide* note 10) subject to the limitation; but as this provision has been omitted from the new Act, it follows that the proviso to sub-sec. (1) does not apply.

(2) Imprisonment in default of payment cannot be ordered. Distress and sale or a civil suit (sec. 164) are the only means of recovery.

The Magistrate may also order compensation for any damage done to municipal property by the offender; sec. 163.

Money due on contracts not recoverable under this section.—"A person who had obtained a contract to collect a certain tax imposed by a District Municipality having failed to pay over the money due under the contract at the stipulated time was convicted by a Magistrate under this section and ordered to pay it to the municipality with interest and also to pay a fine and court fee charges. *Held*, reversing the order, that the section did not apply." (*In re Jagu Santram*, I. L. R. 22, Bom. 709.) This was followed in I. L. R. 26 Mad. 475.

Wilful or negligent omission to pay, &c.—By sec. 111, Madras Act, if a defaulter is prosecuted by reason of the distraint, or a sufficient distraint of his property, being impracticable, he shall be liable (in addition to the amount due and cost of prosecution), on proof of wilful or negligent omission to pay, or wilful prevention of distraint, a fine not exceeding

twice the amount due for tax and warrant fee, and if distraint has taken place, the distraint fee and expenses of detention and sale.

17 **On application to such Magistrate.**—These words are new.

This application is exempt from stamp duty. Court Fees Act VII of 1870, section 19, clause (18)."

This application will have to be dealt with exactly as if it were a complaint and in the manner provided by the Criminal Procedure Code. The Magistrate must be satisfied that the claim is legal and must give the person proceeded against a hearing as provided in the Code, either under Chapter XXII as a summary trial if empowered to try summarily, or under Chapter XX as a summons case. (See note 14.)

18 **"By the distress and sale."**—These words down to the end of the section are in substitution of the words in the old Act "by a summary proceeding before such Magistrate in the manner provided in the Code of Criminal Prodecure." This is taken fron section 386 of that Code which provides that when an offender is sentenced to pay a fine, the Court may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to him. The amendment which makes very little difference in the law was suggested by the Government of India. Compare section 201, Panjab Act.

Bengal Act, section 335, says fines under the Act imposed by a Magistrate on conviction of an offence may be levied under the provisions of the Code of Criminal Procedure.

19 **"Any moveable property".**—See definition, note 2, page 106.

Huts are not moveable property under the meaning of this section. For a hut is a building sec. 3 (7) and a building is immoveable property. The fact that the hut may, according to the custom of the country, be removeable by the tenant, does not make it moveable property. See *Matu Miah* v. *Nund Ram*, 8 B. L. R., 517, where the question of what constitutes moveable and immoveable property is discussed very thoroughly.

"The doors of a house are not attachable as moveable property under Madras Act IV of 1884. (*Purushottama* v. *Municipal Council of Bellary*, I. L. R. 14. Mad. 467.)

The doors of a house are not moveable property and cannct be attached under sec. 103, District Municipal Act (Madras). (*Queen Emp.* v. *Shaik Ibrahim.* I. L. R. 13 Mad. 519.)

The doors of a building form part of an immoveable property. (*Peru Bepari* v. *Ronno-Maifarash*, I. L. R. 11 Cal. 164.)

Wearing apparel not exempt from attachment—"There is no limitation in section 84 of Bom. Act, 1873, (new sec. 161) or in section 386 of the Crim. Pro. Code, such as is found in section 156 of the Land Revenue Code, and no such limitation having the force of law can be extended to section 84, without a legal enactment.

It is thus clear that before a rule can be obtained directing the exemption * * * of wearing apparel from moveable property which may be attached and sold under Section 84, it would be necessary to have a similar rule published under the Criminal Procedure Code. This is obviously out of the question.

"Whether section 84 should be amended is another question." (G. R. 3065 of 14th Aug. 1885, Gen. Dep.)

As to attachment and sale of *immoveable property*, see note to sec. 164.

20 **"Within the limits of his jurisdiction."**—This part of this sub-section though based on sec. 386 of the Criminal Procedure Code appears to have been taken partly from sec. 201, Panjab Act, which provides that "any arrears of any tax or fee or any other money claimable by a committee under this Act may be recovered, on application to a Magistrate having jurisdiction within the limits of the municipality, *or in any other place where the person from whom the money is claimable may, for the time being, be resident*, by the distress and sale of any movable property within the limits of his jurisdiction belonging to such person."

It is difficult to understand the need of these words here, and what they are intended to mean. They can scarcely mean to limit the distress, &c., to property within the limits of the jurisdiction of the Magistrate to whom the application is first made, for there is apparently nothing to prevent the municipality making the application to any other Magistrate within whose limits any of the defaulter's property is, and so attaching all. On the other hand, it was not necessary to indicate that the Magistrate could only attach property within his own limits, for the procedure of the Court is governed by the Crim. Pro. Code, sec 387, of which provides that "such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found."

It should be observed that under sec. 83 (4), the distress may be of "any moveable property *whereever it may be found.*" It is not understood what could have been the intention of the Legislature in restricting the distress in the one case and not in the other.

Bengal Act, section 127, expressly provides for the distress and sale of property *beyond the limits of the municipality* if none sufficient within it.

Distress lawful though defective in form.

162. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in any summons, conviction or warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

Origin of section.—This is section 85 of the old Act of 1873. See s. 154 (4).

The first part of this section down to the words "proceeding relating thereto" is identical with the Bengal Act, section 128. Compare Madras Act, section 262, from which the latter part of this section has been taken.

Section 525 (2) of the Bombay City Act provides that no informality, clerical error, omission or other defect shall be deemed to render the assessment, distress, notice, bill, schedule, summons or other document invalid or illegal, if the provisions of the Act, regulations and by-laws have in substance and effect been complied with; but any person who sustains any special damage by reason of such informality, &c., shall be entitled to recover compensation by suit. Any such informality, &c., may at any time, as far as possible, be rectified.

Damage to municipal property, how made good.

163. If through any act, neglect or default, on account whereof any person shall have incurred any penalty imposed by or under this Act, any damage to the property of the municipality shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty, and the amount of damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is convicted, and on non-payment of such damage on demand, the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

This is a re-enactment of clause 1 of section 83 of the old Act of 1873, and follows Bombay City Act, section 502.

Alternative procedure by suit.

164 In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding the whole or any part of any amount recoverable under the provisions of Chapter VIII, or of any compensation, expenses, charges or damages awarded under this Act, it shall be lawful for the municipality to sue in any Court of competent jurisdiction the person liable to pay the same, as also any other person who may have in any other way caused, or may appear likely to cause, any injury to any property, rights or privileges of the municipality.

1 **Origin of section.**—This is a re-enactment of clause 2 of sec. 83 of the old Act, except the words "amount recoverable under the provisions of Chapter VIII," and is on the lines of Bom. City Act, sec. 211. See notes to heading of Chapter VIII, page 249.

Under the Panjab Act, sec. 148, the alternative procedure by suit is limited to the recovery of costs incurred in executing any works in default of the owner or occupier.

Bengal Act, section 129, read with section 360, is identical with this section, except the latter part beginning with the words "as also any other person, &c."

The object of this alternative procedure is that the municipalities may, in execution of a decree, apply for the attachment and sale of the defaulter's *immovable property*, and if the decree is for any sum due on account of any tax imposed on lands and buildings, by section 87 such claim has priority to all other claims on the building or land in respect of which such tax is leviable, except any Govt. land revenue that may be due thereon.

Under Madras Act, sec. 103 (3), a municipality may sue for any amount due under the Act, and by section 269-A, the limitation is 3 years from the date upon which such suit might first have been instituted.

Under the Limitation Act, the period is 90 days.

165. (1) [1]Power to compromise. The municipality may compound or compromise in respect of any suit instituted by or against them, or, in respect of any claim or demand arising out of any contract entered into by them under this Act, for such sum of money or other compensation as they shall deem sufficient:

Provided that, if any sanction in the making of any contract is required by this Act, the like previous sanction shall be obtained for compounding or compromising any claim or demand arising out of such contract.

[2](2) The municipality may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in them, their officers, and servants under this Act.

1 **Origin of section.**—This sub-sec. (1) is new. It, without the proviso, is taken from the City of Bom. Improvement Act (IV of 1898), sec. 20.

The compound or compromise is only in respect of any suit and not of an offence. Bom. City Act, sec. 517 (1), besides providing for the composition of civil suits, (*b*) authorises the Commissioner to "compound any offence against this Act, which, under the law at the time in force, may legally be compounded." Sec. 345 of the Criminal Procedure Code provides for the composition of certain offences under the Penal Code only, and that "no offence shall be compounded, except as provided in this section." As the word offence bear means "any act or omission made punishable by any law for the time being in force," it follows, as stated in the 6th column of Schedule II to the Procedure Code, that offences under the Municipal Act are non-compoundable. As all such offences are triable as summons cases, the municipality may withdraw from the prosecution by non-appearance under sec. 247 of the Code, or on application under sec. 248.

Panjab Act, sec. 187, expressly provides for the composition by the municipality of offences under the Act, rules and by-laws, in accordance with authority given by the Local Government under rules regulating the same. Sums so paid are to be credited to the Municipal Fund.

2 **"Compensation to be paid."**—The marginal note should be, as shown in the "Contents."

Sub-sec. 2 is clause 3 of sec. 13 of the old Act of 1873 re-enacted, and follows Bom. City Act, sec. 501; Bengal Act, sec. 362; Madras Act, sec. 278.

Panjab Act, sec. 149 (1), is similar, but adds "and *shall* make such compensation where the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised."

The object of this sub-section appears to be to give municipalities the option of paying compensation in anticipation of any Civil suits which may be brought against them for recovery of damages; hence sec. 167 provides for one month's previous notice of such intended suit.

"*Damage*" here referred to is different from the damages for which sec. 160 provides a special procedure for recovery. The term is defined by Wharton to be "a loss or injury by the fault of another, *e. g.*, by an unlawful act or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff."

Assistance for the recovery of rent on land.

166. For the purpose of the recovery of any amount due on account of rent from any person to a municipality in respect of any land vested in or otherwise held by such municipality, the municipality shall be deemed to be superior holders, and every such person an inferior holder, of such land, within the meaning of sections 86 and 87 of the Bombay Land Revenue Code, 1879, and the municipality as superior holders shall be entitled, for the recovery of every such amount, to all the assistance to which under the said sections superior holders are entitled for the recovery of rent or land revenue payable to them by inferior holders.

Origin of section.—This is a new section enabling municipalities to recover their rents punctually through the Collector. It was not considered desirable that a municipality should have power to collect them as taxes.

Sec. 51 provides that all rents accruing from municipal land or other property shall be part of the municipal fund.

The assistance should not be applied for except in cases where the tenants refuse to pay, or payment is not made and the tenancy year is drawing to a close.

Under Land Revenue Code, sec. 86, a written application must be made within the year of tenancy in which the rent became payable; and by sec. 87, the Collector on receipt of the application causes a written notice to be served on the inferior holder fixing a day for inquiry into the case. On the day so fixed, he shall hold a summary inquiry, and shall pass an order for rendering assistance to the superior holder for the recovery of such amount, if any, as appears to him upon the evidence to be due. The mode of recovery is laid down in Chapter XI of that Code. In the case of agricultural lands, sec. 138 provides that the rent is to be a prior claim on the crop, and secs. 140—145 provide for precautionary measures by preventing the crop being sold or disposed of before rent paid.

Rent if not paid when due becomes an arrear and may be recovered by the following processes:—

(*a*) by serving written notice of demand on defaulter, sec. 152;

(*b*) by forfeiture of the occupancy, sec. 153;

(*c*) by distraint and sale of defaulter's movable property, sec. 154;

(*d*) by sale of his immovable property, sec. 155;

(*e*) by his arrest and imprisonment, secs. 157 and 158;

The defaulter is also liable to a charge by way of penalty or interest not exceeding ¼ of the amount of rent overdue.

These rents had heretofore been recovered by the municipality on application to the Magistrate under sec. 84 of the old Act of 1873, but now they are recoverable only under this section. Rents are not included in the definition of tax, see sec. 3 (14). Where lands are not vested in a municipality, but they enjoy a full beneficiary interest therein, except the right of sale, this section does not apply, for reading it with sec. 86 of the Land Revenue Code, the municipality are not 'superior holders.'

On the question whether irrespective of sec. 166 the municipality were 'superior holders' within the meaning of section 86, Land Rev. Code, so as to entitle them to assistance in respect of such lands, the Advocate General, Bombay, was of opinion that though the definition of the term 'superior holder' in sec. 3 (13), Land Rev. Code, would include a

municipality in respect to these particular lands, yet the express application of sec. 166 of this Act of the rights of superior holders under the Land Rev. Code in respect of lands vested in them is, according to the rule of interpretation stated by Lindley L. J., in 1892 3 Ch., page 250, sufficient to exclude the application of the Code to other cases in which, but for sec. 166, the municipality would be 'superior holders.' It was therefore, suggested, that in the case of Crown lands handed over but not vested in a municipality, Government should either execute formal transfers defining the extent of the proprietory rights intended to be conferred, or repeal sec. 166, in which latter case, the municipality would enjoy the benefit of sec. 86 of the Land Rev. Code. G. R. 8514 of 6 Dec. 1901, Rev. Dep., directed that in such cases the Collector should give assistance to the municipality under sec. 86, and the question of the amendment of sec. 166 of this Act would be considered hereafter.

It was held under the Panjab Act that claims for arrears of rent, which are not for any arrears of tax, fee or for money claimable under the Act, could not be realised through the agency of a Magistrate under s. 201 (corresponding to sec. 161) of the Act. *Din Mahomed* v. *Municipal Committee, Amritsar*, 23 P. R. 1903 Cr. followed (*Hira Lal* v *Empeyor* 9 P. W. R. 1909 Cr.; 1909, 3 Ind. Cas. 638.)

Section not applicable to rent of building.—See note 3 sec. 51.

167. No suit [2]shall be commenced against any municipality,

[1]Limitation of suits, &c.

or against any officer or servant of a municipality, or any person acting under the orders of a municipality, [3]for anything done, or purporting to have been done, in pursuance of this Act, without giving to such municipality, officer, servant or person [4]one month's previous notice in writing of the intended suit [5]and of the cause thereof, nor after [6]six months from the date of the act complained of;

and in the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all [7]costs incurred by the defendant after such tender.

1 **Limitation of suits.**—This is sec. 48 of Bom. II of 1884, with the word 'suit' substituted for 'action'.

This substituton has been made in consequence of the Bom. High Court Ruling that sec. 48 applied to suits for damages and not to suits in the nature of action for ejectments; and with the object of securing that persons aggrieved at the action of the committee shall, in all cases, exhaust their means of redress in the shape of appeal to the municipality before going to law, as it was unlikely a municipality would refuse to remedy a well founded complaint.

Sec. 74 of the Local Boards Act contains exactly the same provisions.

This section is a reproduction of repealed secs. 86 and 97 of the Act of 1873 both of which dealt with suits against municipalities. The latter was unnecessary as there was nothing in the Acts which would bar any aggrieved person's ordinary remedy in the Civil Courts, and the former was here reproduced in clearer language.

The Committee considered the following suggestion placed before them by the Honourable Mr. Batty; but thought on the whole that the clause should stand as at present—

"This clause has given rise to a very considerable number of appeals contested up to the High Court, the latest being that of *Municipality of Parola* v. *Laxmondas*. That case was heard by Fulton J.; and myself, and the long series of decisions on the question are all quoted there. I do not know if the question has been considered by the Select Committee, but would again venture to submit that it would be desirable, if possible, to avoid expensive litigation and appeals, and that in the English Statute 56 and 57 Victoria, Chapter 61, section 1, passed after the decision in *Flower* v. *Local Board of Leyton*, L. R. 5, Ch. D., 347, no notice of suit is now required, but the Court can award a defendant municipality all costs, if in the opinion of the Court, the plaintiff has not given a sufficient opportunity of tendering amends before the commencement of the proceedings. This, I have the

honour to submit, is a far more equitable arrangement than to refuse a plaintiff all relief after lengthy litigation, simply because he has failed to give a notice as to the necessity for which as shown by the number of decisions on the point, considerable doubt, necessitating more than one appeal, so frequently arises."

Notice not necessary in suit to restrain demolition of building.—"The plaintiffs said the municipality of Parola to obtain a declaration that a certain building erected by them had been built in accordance with, and not in contravention of, orders issued by the municipality, and further, to obtain an injunction restraining the municipality from pulling it down. The municipality contended (*inter alia*) that the suit was not maintainable, as no notice had been given as required by sec. 48. Batty J. after reviewing all the cases on this subject hereinafter cited, says in his judgment:—

"The result of the cases above cited appears to indicate, that for the purposes of section 48 what the Court has to look to is the real object of the suit, and the section requires notice only when the suit is for an act already done or purporting to have been already done, under the powers conferred. In such case only can it be necessary for the plaintiff to give an opportunity to make amends or compensation, and in such cases, the delay necessitated by notice is comparatively immaterial. But when the suit is not for an act already done, but to prevent an act from being irremediably, irrevocably done, neither can amends be claimable, nor can delay be obligatory. It is impossible to hold that a mere notice, a requisition or a threat to do a thing in future, even though it be issued or made under the powers, is an act already done, or purporting to have been done; and there is nothing else alleged in this case that can be alleged to have been done by the municipality. A notice therefore, does not appear to have been made an indispensable preliminary to such a suit, by section 48 of the Act. (*The Municipality of Parola* v. *Laxmandas*, I. L. R. 25, Bom. 142, 2 Bom. L. R. 857.) This was followed by 6 Bom. L. R. 1028, noted p. 290.

2 Shall be commenced.—*Suit to commence not on date of first filing of plaint but of amended plaint.*—Plaintiff was ordered by the Municipal Committee of Lahore to demolish two bath-rooms in his Kothi.

On the 7 May 1907 he applied for a copy of the order and asked that the order should be set aside but that if this should not be done, the committee might postpone the order as he intended to bring a suit on the opening of the Civil Courts. Upon this the secretary endorsed on order that the grace of twenty days may be allowed.

On the 20 May 1907 plaintiff filed suit for declaration. The plaint, however, did not contain any statement that notice had been given to the committee as required by section 38 of the municipal Act, and it was, therefore, returned for amendment, but the amended plaint was not taken on the file before the 25 November 1907. On the 28 November 1907 the Court remarking that, whereas the notice was delivered to the Committee on the 7 May 1907, the case was instituted on the 28 May 1907, *i. e.*, less than one month from the date of delivery of the notice, ruled that this was in contravention of section 38 of the Act, and therefore, the plaint must be rejected with costs. On appeal to the Chief Court.

Held, that the plaintiff had misinterpreted the Secretary's order of the 7 May 1907. It meant not that he should bring a suit within 20 days, but that the bath-rooms would not be demolished within that period.

That the provisions of law as regards notice had been sufficiently complied with. The purpose of the laws is that a Municipal Committee should have reasonable time to answer claims made against it, and for purposes like this the date of the presentation of the amended plaint is what the Court should look to. *Ganda Mal* v. *Thakar Harkishen*, 3 P. R. 1900, followed. (*Mahamed Yasin* v. *Municipal Committee, Lahore* 110 P. L. R. 1911; 1911, 9 Ind. Cas. 844.)

See also 5 Ind. Cas. 81 noted p. 417 as to premature suit.

Period of commencement in case of plaint returned.—In computing the period of six months the period between the filing of the suit in the Civil Court which returned the plaint and its filing in another Civil Court on the date of return must be excluded. (*Guracharya* v. *President Belgaum Municipality*, I. L. R., (1884) 8 Bom. 529.)

3 "Anything done or purporting to have been done in persuance of this Act."—The Bombay City Act, section 527 (1), which provides for the same periods of limitation says "in respect of any Act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act." This is the same as the Madras Local Boards Act (V of 1884) section 156 and the Madras Municipal Act (IV of 1884) section 261, and the words are taken from the English Municipal Corporation Act 1882, section 226. The words "in respect of any alleged neglect, &c.," were inserted in the English Act with reference to the ruling in *King* v. *Burrell*, 12 A and E 460 where it was held that the notice of action in a suit for an omission or neglect was not necessary under

section 135 of the Act of 1835 as by that section such notice was required only in actions for anything *done* in pursuance of the Act. See also *Wilson* v. *Mayor of Halifax*, L. R. 3 Exch. 114.

The Panjab Act, section 38 says, "in its or his official capacity."

In the Madras Act, section above referred to it is added "if such Act was done or if such default was made in good faith," and it excludes from the limitation of 6 months "an action for the recovery of immoveable property or for a declaration of title thereto." These were added in view of the ruling in I. L. R. 18, Bom. 19 which as will be seen from notes below has been overruled.

The English Public Health Act 1875 (38 and 39 Vic., Ch. 55) is in the same words. The corresponding words in the Bengal Municipal Act is "anything done under this Act;" in the Panjab Act they are "any Act purporting to be done in its or his official capacity;" and in the Calcutta Municipal Act "any Act purporting to be done under this Act," but sub-section (5) makes this non-applicable to any suit under section 54 of the Specific Relief Act that is for "a perpetual injunction to prevent the breach of an obligation existing in favour of the applicant."

To what suits does the section apply?

Bombay High Court Cases—*Notice not necessary in action for ejectment.*—Plaintiff brought a suit in the nature of an action for ejectment to recover possession of land of which he said he had been wrongfully dispossesed by the municipality who alleged that plaintiff never had been in possession of the land which was a piece of vacant ground in the possession and occupation of Government, and that the suit having been brought more than 3 months after the accruing of the cause of action it was barred under sec. 240 of Bom. Act II of 1865, the provisions of which are very similar to those of sec. 86 of Bom. Act VI of 1873. *Held* that an action of ejectment was not brought to recover damages (sufficient amends) for an act "done or intended to be done" under the Act. The suit was not a suit to recover monetory compensation for a wrongful act but for recovery of possession of property and so did not come under this section. *Price* v. *Khilat Chundra Ghose* (1870) (5 Bom. L. R. Appx. 50; 13 W. R. 461 noted p. 418), and Phear J. in *Poorno Chunder Roy* v. *Balfour* (see note 6 *infra*) approved. See also 7 W. R. C. R. 92, p. 414 and (1876) I. L. R. 1 All. 269. (*Sorabji Nassarwanji Dundas* v. *The Justices of the Peace for the City of Bombay*, 1875, 12 Bom. H. C. Rep. 250, O. C. J.)

Notice necessary in suits for damages or compensation—not in actions for ejectment.—In the case of *Joharmal* v. *The Municipality of Ahmednagar*, 1878, (I. L. R. 6 Bom. 580), the Plaintiff having built a terrace on a piece of ground without the sanction of the municipality, received a notice from them to pull it down, and as he did not comply the municipality pulled it down. Plaintiff then, more than 3 months after, filed this suit to establish his right to the land and for damages. *Held* that the suit, in so far only as it related to damages, was bound by sec. 86 of Bom. VI of 1873, as the limitation of 3 month's applies only to suits for damages, and not to suits in the nature of actions of ejectment. Also that the limitation of 3 years provided in Clause 43 of Schedule II of the Limitation Act, 1871, applies only to suits for damages on account of trespass, and not to suits to recover immovable property from a trespasser, for which the period of limitation is 12 years, as provided by Clause 143 of that Act. The decision in 12 Bom. H. C. Rep. 250 *supra* affirmed.

Notice not necessary in suit for refund of tax illegally withheld.—"Plaintiff sued to recover from the municipality certain town duties which it was admitted he was entitled to have refunded to him. *Held* (1) that sec. 527 of the Bom. City Act (which mostly corresponds with this section 167) did not apply, and that no notice to the defendant of this suit was necessary. The defendant could not claim that his conduct had any relation to the execution of the act if he knowingly and intentionally acted in contravention of its provisions. Here the amount payable by way of refund was ascertained and the plaintiff's right to recover it was admitted and the refusal to refund was a deliberate and conscious contravention of the provisions of the Act. In such a case, it could not be held that the money was *bona fide* withheld in execution of the Act, and that being so, the defendant was not entitled to notice under section 527.

"(2) That the suit was therefore not one of the class referred to in article 2, schedule II, of the Limitation Act (XV of 1887), and was not barred. When it is provided in an Act that notice shall be given to the defendant of any suit intended to be brought in respect of an act done in pursuance or execution or intended execution of the Act or in respect of neglect or default in its execution, such provision does not apply when the action is brought on a contract, for the conduct giving rise to the action is a wrongful act or omission under the contract as distinct from one in the execution of the Act." (*Ramchandas Mararji* v. *the Municipal Commissioner of Bombay*, I. L. R. 25, Bom. 387. 3 Bom. L. R. 158.)

Notice not necessary in suit for specific performance of a contract, or damages for breach.—"This suit was brought on the allegations that the plaintiff allowed the defendant

municipality to remove some otas belonging to him, and that the latter agreed that they would rebuild them on the completion of a gutter which they intended to build beneath the site, but that they now refuse to perform their agreement. It is thus a suit for specific performance of a contract, or for damages for breach thereof—such a suit is not an action for anything done or purporting to be done in pursuance of the Act, for the Act, though it may give the municipality power to make contracts, does not authorise them to refuse to perform them, and no section of the Act has been quoted under which they are now purporting to act. That sec. 48 does not apply to actions on contracts was ruled in *Mayandi* v. *McQuhae*, I. L. R. 2 Mad., p. 124, and was also stated in the judgment of Ranade J. in *Manohar* v. *Dakore Municipality*, P. J. 1896, p. 774." (*Municipality of Faizpur* v. *Manak Dulab*, 1897, P. J. 140.)

Defamatory statement when not an act done, &c., in pursuance of Act.—A filed a suit to recover damages from the defendant—a Huzur Deputy Collector who had been appointed by Government president of a municipality—for a libel contained in a report sent by the latter as President to the Collector. Defendant replied that the report was made pursuant to the Act in his capacity as President, and pleaded want of notice, limitation, privilege, no libel. The District Judge in decreeing for plaintiff observes :—

"1. Sec. 48, Bom. II, 1884, does not apply, L. R. Q. B., 1892, p. 431, is not an authority to be relied on, for certainly the composing and writing of a report is an act done, and the distinction drawn in the English cases is too fine to be applied to this section. Whether or not sec. 48 governs such proceedings depends upon the test whether the action is against the *individual* or the *Municipal officer?* If the former the section does not apply, if the latter it does. But here the action is against the individual, and the essence of the wrong lies in the personal animus charged against him. Defendant if cast in damages here could not recover against the municipality.

"2. Is the communication privileged? It is not. It certainly defamatory. The occasion of the communication was certainly privileged, but if malice in fact be found, as in this case, there is an end of the privilege. (*See Lord Bretts Observations Clark* v. *Molyneaux* 3 Q. B. D.; 246—247.) If malice be proved, the privilege attaching to the occasion, unless it be absolute, is lost at once. Odgers on Lible, 291."

On appeal to the High Court, it was *held* that the fact that Government appointed one of its officers to be the president, did not, under Bom. VI of 1884, make him *quâ* president an officer of Government. *Held*, also that sec. 48, did not apply. Even if it be assumed that the report was submitted under some general provision of the Act, the insertion in it of defamatory matter cannot be said to be an act done or purporting to be done in pursuance of the Act. It is a piece of individual malice and the suit is against the defendant as an individual, Decree approved with costs." (*Gopal Janardhar Bhatkhande* (Orig. Def.) v. *Mahadeo Ramchandra Nadkerni* 1896, P. J. 325.) See G. R. 166 of 12 January 1887, Gen. Dep.

Notice necessary in suit for possession of land and damages for wrongful removal of huts.—Plaintiff sued the municipality for recovery of possession of certain land on which plaintiff's huts had been wrongfully removed and for damages. *Held*, the words "in the case of any such action for damages" in section 48 (1) of Bombay Act II of 1884 clearly show that it was contemplated that there might be actions of another description to which the provisions in the former paragraph would be applicable. The section does not contemplate only "suits to recover monetory compensation for a wrongful Act." A suit in ejectment, not being a suit brought to recover damages "for an act done or intended to be done," was excluded under section 86 (2) of Bombay Act VI of 1873, but being an "action for an act done," that act, being the dispossession by the municipality with a view to being restored to possession, falls under the provisions of the first paragraph of section 48 of Bombay Act II of 1884. 12 Bom. H. C. R., A. C. J. 250 distinguished as the words in the two Acts are very different. (*Nagusha* v. *Municipality of Sholapur*, I. L. R. (1892) 18 Bom, 19, 1892, P. J. 395.) This is overruled by I. L. R. 22 Bom. 289 on the ground apparently that as the municipality acted illegally in the removal the act was not one "done in pursuance of the Act."

Notice necessary in all claims for damages arising out of exercise of powers:—A person suing a municipality for the refund of money illegally levied from him as house tax is bound to serve a previous notice as required by sec. 86 of the Act.

The object of that provision would appear to be to give municipal bodies or officers, who in the *bona fide* discharge of their public duties may have committed illegal acts not justified by their powers, an opportunity of tendering sufficient amends for such acts before being harassed with an action. Section 86 is not confined to an action of damages, but is applicable to every claim of a pecuniary character arising out of the acts of municipal bodies or officers, who in the *bona fide* discharge of their public duties may have committed illegalities not justified by their powers. (*Ranchod* v. *Municipality of Dakori* (1884), I. L. R. 8 Bom. 421).

Notice not necessary in a suit for injunction to restrain municipality from doing any act. A suit for an injunction to restrain a municipality from removing a certain building or construction not being an action "for anything done or purporting to have been done in pursuance of" the Act can be instituted without a notice under sec. 48. (*Panachand* v. *The Ahmedabad Municipality*, 1896, P. J. 296; I. L. R. 22 Bom. 230.)

Notice not necessary in action for ejectment but is necessary for recovery of possession of land from Municipality.—A municipality having purchased vacant land from a mortgagee in possession, and the mortgagor having subsequently brought a suit against the mortgagee and the municipality to recover possession. *Held*, that an ordinary action of ejectment against a municipality to try the title to land is not an action for anything done or purporting to be done in pursuance of the Act and therefore does not require notice. The Act does not enable or purport to enable the municipality to keep land which does not belong to them.

When a municipality dispossesses the plaintiff, the act of the municipality may be said to have been something done or purporting to have been done in pursuance of the Act, *Nagusha* v. *Municipality of Sholapur*, I. L. R., 18 Bom., 19 distinguished (*Kashinath* v. *Gangabai*, P. J. 1896, page 402; I. L. R. 22 Bom. 283.)

Notice not necessary in suit for possession of land taken by municipality illegally.—The plaintiff was the inamdar of the village of Dakor. He filed an ejectment suit against the Municipality of Dakor, alleging that the municipality had illegally and wrongfully encroached upon a portion of the Gomti Lake at Dakor by laying the foundations of a building which they intended to erect of the purpose of a dharamsala. The municipality pleaded (*inter alia*) that the suit was bad for want of notice of action, under sec. 48 of Act II of 1884. *Held* (by a majority of the Full Bench) that the provisions of sec. 48 do not apply to action for the possession of land brought against a municipality.

Per Parsons J,—"The provisions of sec. 48 apply only to actions for the possession of land whereof the plaintiff has been dispossessed by the municipality acting or purporting to act under some section of the municipal Act, which empowers them to take possession of, or out any one from, that land."

Per Ranade J.—"Sec. 48 does not generally apply to suits for the possession of land, except in those cases where the claim arises on account of some act or omission of the municipality, when it acts in pursuance of its statutory powers and encroaches upon private rights." *Nagusha* v. *Municipality of Sholapur*, I. L. R. 18 Bom. 19, overruled. (Full Bench, (1896) *Manshar Ganesh Tambheoar* v. *Dakor Municipality*. I. L. R. 22 Bom. 289, P. J. 1896, 678.) See 9 W. R., 535 noted p. 418.

The next case carries the principle a step further.

Notice necessary in suit for damages, but not for suit for ejectment.—"This suit in so far as it is a suit for damages is clearly such a suit as is contemplated by section 48, but in so far as it is a suit for possession it falls within the Full Bench ruling in second appeal No. 16 of 1896 and consequently notice of action was not necessary under that section. The injunction is merely concillary to the ejectment suit and in regard to such relief notice has always been held to be unnecessary. *Flower* v. *Local Board of Law Leyton*. L. R. 5 Ch. D., p. 34. (*Saidmallappa* v. *The Gokak Municipality*, 1897, P. J. 1; I. L. R. 22, Bom. 605.)

Notice not necessary in suit for injunction.—In this case the plaintiff who has resisted the municipality in laying pipes on his land now sues for an injunction to restrain them from doing so. It is clearly not a suit for anything done in pursuance of the Act, but to prevent the municipality from doing what the plaintiff alleges to be an illegal act. The sections conversant with this subject have always been held not to apply to actions for an injunction. *Flower* v. *Local Board of Law Leyton*. L. R. 5, Ch. D., p. 347. *President, Taluk Board, Sinaganga* v. *Narayanan*. I. L. R. Mad., p. 317. *Manohar Ganesh* v. *Dakore Municipality*. P. J. for 1896, p. 768. *Sidmalappa* v. *Gokak Municipality*. S. A. 629 of 1896, decided on 8 January 1897. (*Harilal* v. *Himat*, 1897, P. J. 17. I. L. R 22 Bom. 636.)

Held, following I. L. R. 25 Bom. 142 (noted *supra*) that section 527 of the Bombay City Act (corresponding to this section) did not apply to a suit to restrain a municipality by injunction from doing an act which was threatend but not done; hence no notice was necessary in such a suit. See 6 Bom. L. R. 1028 noted p. 290.

Notice necessary in suit for wrongful dismissal of servant.—Where a municipality exercising the power given to it by the Act dismisses one of its servants, that is "an Act done or purporting to have been done in pursuance of the Act" within the meaning of this section. (*Municipality of Ratnagiri* v. *Vasudeo Balkrishna*, I. L. R. (1915) 39 Bom. 600.)

Calcutta High Court Cases. "*Notice necessary only in cases of bona fide exercise of powers by municipality.*—Section 87, Bengal Act III of 1864, is applicable only in those cases

where the plaintiff claims damages for compensation for some wrongful act committed by the municipality or its officers, &c., in the exercise, or honestly supposed exercised of their statutory powers; and the notice is meant to give the municipality anopportunity to make amends for the wrong without incurring the cost of litigation." (*Chunder Sikhur Bundopadhya* v. *Obhoy Churn Bagchi* (1880), I. L. R. 6 Cal. 8.)

The cases in which a public officer is entitled to a notice under sec. 424 C. P. Code, are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties and the object is that 'if such an officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong, before any one has a right to require payment in respect of that wrong, he shall have an opportunity of setting himself right, making amends, restoring what he has taken, or paying for the damages he has done. (*Shahebzadee Shahunshah Begum* v. *Fergusson*, I. L. R. (1881) 7 Cal. 499.)

Notice necessary in suit for illegal and malicious arrest.—The plaintiff sued the defendant, a police officer, to recover damages for two distinct acts (*viz.*, wrongful arrest and trespass) alleged to have been illegally and maliciously done by the defendant on two different occasions, and claimed one lump sum as damages for both the acts.

Held.—That the former act (*viz.* the plaintiff's arrest) was an act done by the defendant in his official capacity and was clearly of the kind contemplated by section 424 C. Pro. Code, and so the suit was rightly dismissed for want of such notice. I. L. R. 7 Cal. 499, distinguished; it does not warrant the drawing of any distinction between acts of this kind done inadvertently or otherwise.

Quare.—Whether the latter act (*viz.*, the trespass into the plaintiff's house) on the allegations in the plaint, was an act done by the Magistrate in his official capacity, and whether a notice would be necessary (*Sogendra Nath Roy Bahadur* v. *Price*, I. L. R. (1897) 24 Cal. 584.)

Notice necessary in suit to restrain municipality acquiring road.—The municipality declared a road to be a public road under Bengal Act III of 1864 sec. 77 of which requires that no action for such a matter shall be brought until one month after notice in writing. Plaintiff brought a suit to restrain the municipality from interfering with the road which he declared was his private road. *Held* that as the municipality acted under powers given, the notice was necessary and that a notice objecting to the decision and asking the municipality to re-consider it was not enough. (*Abhoyanath Bose* v. *Chairman Municipality Kishnaghur*, 1867, 7 W. R. 92.)

Notice necessary in respect of act done bona fide.—A municipality is entitled to one month's notice under section 87, Act III (B. C.) 1864 when acting *bona fide* in the belief that in demolishing a building they are exercising powers given them by the Act; not if their proceedings are not justified by the Act and only colorably done under cover thereof. (*Gopee Kishen Gossain* v. *Ryland*, 1868, 9 W. R. 279.)

Madras High Court Cases.—*Notice not necessary in suit for breach of contract.*—A suit was brought to recover from the municipality the balance of a sum of money due for timber supplied under a contract. *Held* that no notice was necessary, such a suit not falling under sec. 168, Mad. Act III of 1871. The contract may doubtless be made under powers conferred by the Act, but a breach of the contract by non-payment of balance is not "anything done under the Act." (*Mayandi* v. *McQuhae* (1878) I. L. R. 2 Mad. 124.)

This decision, it may be useful to compare with that in *Selines* v. *Judge* (1871), L. R. 6 Q. B. 724, where the question arose on a section similarly worded, and it was held that a suit to recover back money paid on an assessment of a highway rate made under color of the Acts 5 and 6, William IV., Chap. 50, required preliminary notice, the collection, though illegal, being made in supposed pursuance of the powers thereby conferred.

The case of *Midland Railway Co.* v. *Local Board of Whithington* (1883) 11 Q. B. D., 788, seems to go somewhat further in this direction; for there the notice was held necessary in a suit to recover back, as money had and received, sums which had been paid to the Local Board as charges for the repair by them of a road for which the plaintifs had mistakenly been regarded as responsible. Lindley L. J.; observed that it had been argued that no physical power had been put in force, but that this was a vicious argument, and that he could not follow it. Probably, however, the thing done under the Act in that case, which was regarded as giving the cause of action to the plaintiffs, was not the voluntary payment by them of the money, but the action of the Board in undertaking the repair of the road at the plaintiff's charges.

Notice not necessary in suit for injunction.—"The plaintiff built a wall on his land situate within the limits of the Taluka Board. The Local Board called upon him to remove the wall as constituting an obstruction and gave him notice that in default of his doing so it would be demolished by the authorities. The plaintiff now brought a suit

for an injunction restraining the defendants from interfering with the wall. *Held* that previous notice of action under sec. 156, Mad. Act V of 1864, was not necessary. The section contemplates suits for damages and compensation and does not apply to a suit to obtain a declaration of title to immovable property or for an injunction to restrain interference with such property. *Syed Amir Saheb* v. *Venkaturama* (1892) I. L. R. 16, Mad. 296 followed, where a suit was brought to recover from the Taluka Board land on which the Board had erected a public latrine." (*President, Taluka Board, Sivaganga* v. *Narayanan* (1892) I. L. R. 16, Mad. 317.)

Notice not necessary in suit for injunction.—The notice required by section 261 of the District Municipalities Act is not necessary when the suit is for an injunction which refers to what it is apprehended will be done in the future, and does not relate, as the section does, to acts "done or purporting to be done." It would not be right to impute to the Legislature an intention to insist upon the lapse of the interval involved in the provision as to notice even in regard to cases where such lapse might be attended with the completion of the threatened injury, the prevention of which is the very aim and end of the suit.—*Cf. Kirk.* v. *Tood*, L. R., 21 Ch. D., 484.

Plaintiff's land was on a lower level than a road which bounded it on one site. To prevent the water which collected in the road from flowing over his land, he put up a ridge below his land and the road. Defendant demolished it and the water flooded plaintiff's land. He brought his suit for damages and for an injunction. *Held* that the right of the owner of higher land under section 7, illustration (i) of the Easements Act, *i.e.*, that the water naturally rising in, or falling on, such land shall be allowed by the owner of adjacent lower land to run naturally thereto is not a right in the nature of an easement and is subject to the right of the owner of such lower land to build thereon under section 7, illustration (a), of the Act.

The owner of the lower land cannot complain of the passage of such water as an injury, but he is not bound to keep open such way and may obstruct it by suitable erection on his land. Defendant in removing the obstruction had committed a trespass, and should be restrained. *Smith* v. *Kenrick*. (7. C. B. 515) ; 1864, special No. of W. R. 25 referred to. *Rylands* v. *Fletcher*, L. R. 3 H. L. 338, referred to (*Mahamahopadyaya Rangachariar* v. *Municipal Council of Kumbakonan*, I. L. R. (1906) 29 Mad. 539.)

Held that section 156 (1) of the Madras Local Boards Act as amended and which is identical with section 268 of the Madros District Municipal Act, does not apply to suits brought for an injunction and so notice not necesear. I. L. R. 29 Mad. 529 followed. The period of limitation prescribed by section 155 (3) applies only in the case of suits falling under section 156 (1) which does not include suits for injunction. The amendment of the Act did not alter the law. The suit for injunction was therefore dismissed for want of notice. Sec. 156 of the Madras Act is taken from sec. 264 of the English Public Health Act 1875 (38 and 39 Vic. C. 55) and it has been held that that and similar enactments with regard to notices against public authorities were intended to apply to an action for damages and not to an injunction to restrain an injury. See *Flower* v. *Local Board of Low Layton*, (1877) L. R. 5 Ch. D., 347; *Attorney General* v. *Hackney Local Board* (1875) L. R. 20 Eq. 626; *Selloes* v. *Motloch Bath Local Board* (1885) L. R., 14 Q. B. D. 928; *Chapman Morsons & Co.* v. *Guardians of Auchland Union*, (1889) L. R., 23 Q. B. D., 294. See also (1893) I. L. R. 16 Mad. 317, which embodies the principle of these decisions. See also I. L. R. 16 Mad. 296 (*supra*) and 474 (note 6) and 1. L. R. 22 Bom. 605, (noted p. 413.) (*Govinda Gillai* v. *Taluka Board, Kumbakonam*, I. L. R. (1909) 32 Mad. 371.)

Allahabad High Court Cases.—*Notice necessary only when something is done and consequently compensation claimed.—Notice not necessary in suit for declaration of right to property encroached on by municipality.*—Under section 43 of the N. W. P. and Oudh Municipalities Act (XV of 1873) it was held, on the construction of the section and of analogous provisions in English Statutes, that notice is only necessary where the suit is brought for a *tort* or a *quasi tort*. 9 W. R. 535 and *Price* v. *Kinlal Chandra Ghose*, 5 L. R., Appx. 50 followed. The provision as to notice was directed solely to suits brought for damages consequential on the act done by the Commissioner. The limitation referred to did not apply to a suit in which plaintiff asked for a declaration of his right to property encroached on by the municipality. (*The Municipal Committee of Moradabad* v. *Chatri Singh*, I. L. R. (1876) 1 All. 269.)

Notice not necessary in suit for declaration of right to building demolished.—Section 43 of Act XV of 1873 contemplates suits in which relief of a pecuniary character is claimed for some act done under that act by a Committee, or any of their officers, or any person acting under their directions, and for which damages can be recovered from them personally, and not a suit against a Committee for a declaration of the plaintiff's right to re-construct a building which had been demolished by the order of such Committee, and for compensation for such demolishment. (*Mauni Kasaundhan* v. *Crooke*, I. L. R. (1879) 2 All. 296.)

Notice not necessary in suit for declaration of right to establish a market.—Plaintiffs applied for permission to establish a market on their own land. This the municipality refused. Plaintiffs sued for a declaration of their right and for a perpetual injunction restraining the municipality from their exercising that right. *Held* by Stuart C. J. that sec. 43 of Act XV of 1873 as to the limitation of 3 months applied only to suits brought for something done under the Act, in which compensation was claimed, since the last clause provides that if "sufficient amends" be tendered plaintiff shall not recover, it did not apply to the present suit. I. L. R. 1, All. 269; I. L. R. 2, All. 296; I. L. R. 6 Cal. 8 followed. *Held per centra* by Duthoit J. that the refusal to give permission was an act done under the Act and that the section is not limited to suits for damages. That even so, as plaintiff's suit was based on the injury done to him by the action of the municipality, it was so far founded on *tort* or *quasi tort* even though damages were not claimed. (*Birji Mohan Singh* v. *The Collector of Allahabad*, I. L. R. (1881) 4, All. 102.) Subsequently the Full Bench confirmed the decision of Stuart C. J. and reversed that of Duthoit J. *vide* I. L. R. 4, All. 339.

Section 424 of the Civil Procedure Code provides that "no suit shall be instituted against a public officer in respect of an act purporting to be done by him in his official capacity until 2 months after notice in writing." Section 42 of the Police Act (V of 1861) says "anything done or intended to be done under the provisions of the Act."

Notice not necessary for official act not done in good faith.—Plaintiff brought a suit against a Police officer claiming damages for wrongful confinement, &c. It was found that he did not purport to act in good faith in pursuance of the law, but took advantage of his position as a Police officer to commit illegal and tortious acts maliciously and without a cause. *Held* the notice was not necessary and suit not liable to be dismissed for lack of it. I. L. R. 7 Cal. 499, referred to. I. L. R., 24 C. 584 distinguished as there the act complained of was done in his official capacity. (*Muhamad Saddiq Ahmad* v. *Panna Lal*, I. L. R. (1913) 26 All. 220.)

Suit for injunction against levy of tax demanded—is notice necessary?—Held by Aikman, J. (Knox, J., dissentiente) that where a suit is brought against a Municipal Board, to which the N. W. P. and Oudh Municipalities Act 1900, is applicable, to obtain an injunction prohibiting the Board from levying a tax which the Board has threatened to levy on the plaintiff, the service of such notice as is prescribed by section 49 of the said Act is a condition precedent to the maintainability of the suit. The suit was one "in respect of an Act purporting to be done by the municipality in its official capacity."

Knox, J., *contra*. Where the suit is for an injunction merely, no previous notice is necessary. The notice is required where an act is done, not to something that may or may not be done in the future, I. L. R. 7 Cal. 499 referred to. The proviso referred to was imported into the Act of 1895 out of an excess of superfluous caution. It was not required and when the Act of 1900 was enacted it was dropped out. (*Greenway* v. *Municipal Board of Cawnpore*, I. L. R. (1906) 28, All. 600.)

The Act of 1900 omits the proviso in the previous Act I of 1895 which stated "Provided that nothing in this section shall apply to any suit under sec. 54, Specific Relief Act 1877." This omission was deliberate, the object of the Legislature being that Municipal Boards should have notice of the intention to bring a suit such as the present, so that they might have an opportunity, if so advised, of withdrawing from some untenable position they had taken up, or wrongful demand they have made and so saving cost of litigation. I. L. R. 1 All. 269; 2 All. 296; 4 All. 102 and 339 distinguished as under the old Act XV of 1873 which did not contain the proviso.

Notice neceseary in suit for act done in proper discharge of powers.—Plaintiff sued to recover from a Police officer certain books seized during a search under the Code of plaintiff's house. *Held*, if he did so, which was denied, he did it in his official capacity, and so the notice was necessary. I. L. R. 24, Cal. 584 approved. I. L. R 26, All. 220 distinguished as there the officer acted in bad faith. (*Bakhtwar Mal* v. *Abdul Latif*, I. L. R. (1907) 29 All. 567.)

Suit against councillor for act done officially—notice necessary.—A member of a Municipal Board charged as such member with the supervision of the sanitation of the town made a report to the Board which resulted in the prosecution of certain persons for a municipal offence. The persons prosecuted were acquitted, and thereafter filed a suit for damages for malicious prosecution against the maker of the report. *Held* that the defendant was entitled to the notice provided for by section 49 of the Municipalities Act, 1900, since defendant purported to act in his official capacity as such member. *Muhammad Saddiq Ahmad* v. *Panna Lal*, I. L. R. 26 All., 220, distinguished as in that case defendant did not purport to act in good faith. The present case was more like that in I. L. R. 29, All. 567. (*Jugal Kishore* v. *Jugal Kishore*, I. L. R. (1911) 33 All. 540; 8 A. L. J. 509; 1911, 10 Ind. Cas. 1.)

Notice necessary in suit for damages for prosecution under Act done in good faith—not necessary if done maliciously.—The municipality prosecuted plaintiff under sec. 218 of the Bengal Municipal Act 1884 for non-compliance with an order to remove certain structures and obtained a conviction which on appeal was reversed on 3rd January 1905; on 29 Nov. 1905 plaintiff served the municipality with a notice and on 4 January 1906 filed a civil suit for damages for malicious prosecution. *Held* that as the prosecution was in good faith and that their was reasonable and probable cause for it, the suit was barred under sec. 363 of the Act. If it had been found that the officers of the municipality had acted maliciously without reasonable and probable cause, it could not be said that their act was done under the statute and the special limitation provided by sec. 363 would have been inapplicable. 9 W. R. 535; 6 Cal. 8; 3 C. L. T. 376; 21 M. 367; 25 B. 387; L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; 24 L. T. 905; 19 W. R. 1110 referred to. 3 C. L. J. 36 (Note.) followed. (*Shama Bibi* v. *Chairman Baranagar Municipality* 1910, 6 Ind. Cas. 675.)

4 **One month's previous notice.**—"The object of this provision would appear to be to give municipal bodies or officers, who in the *bona fide* discharge of these public duties may have committed illegal acts not justified by their powers, an opportunity of tendering amends for such acts before being harassed with an action. (I. L. R. (1884) 8 Bom. 421.) The purpose of the law is that a Municipal Committee should have reasonable time to answer claims made against it. (110 P. L. R. 1911; 9 Ind. Cas. 844 noted p. 285.)

This does not mean that the notice itself must state that the intended suit will be commenced after one month. No period need be stated. Even if a lesser period than a month is stated that will not vitiate the notice provided the suit is not brought till after the expiration of the month.

Under the English Act the periods are respectively 14 days and 3 months; under the Calcutta, Bengal and N. W. P. Acts 1 and 3 months; under the C. P. Act 2 and 6 months, the Panjab Act gives 1 month and no other limitation, while Madras Act is the same as this Act.

What constitutes a good notice.—Where a municipality threatened to have a building pulled down because it was unauthorised and the plaintiff's solicitors wrote to the municipality that they had been instructed to "prepare papers" to file a suit to restrain the municipality and requested that no steps should be taken until the re-opening of the Courts, *Held* that all the requirements of a notice were substantially complied with it and it was a good notice. (6 Bom. L. R. 1028 noted p. 290)

Plaintiff complained of the refusal of the municipality to give him full and undisturbed possession of the land of which, he said, he had become absolute owner by purchase, and the question for determination was whether the suit had been brought within three months of the refusal, sec. 48. The Court, on a consideration of the terms of a notice given by the defendant to the plaintiff, in which the municipality told plaintiff though they sold the land to him, he should come and take a lease of it, *held* that it was not so explicit as to give the plaintiff notice that in any case the performance of his contract of purchase would be refused." (*Kapari* v. *The Viramgaum Municipality*, 1896. P. J. 619).

See 7 W. R. 92 noted p. 414 where a letter by plaintiff objecting to the action of the municipality and asking for re-consideration of their decision was held not to be sufficient notice.

Insufficient notice.—The provisions of the Madras City Municipal Act, sec. 433. are almost identical with the 1st para. of this section. It says "on account of any act done or purporting to be done, in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act;" but adds that the notice shall be "left at the Municipal Office or at the place of abode of such person," i.e., officer or servant. Further, "such notice shall state explicitly the cause of action and the name and the place of abode of the intended plaintiff and of his attorney or agent, if any, and shall be signed by the intended plaintiff, or his attorney or agent."

"In a suit against the municipality to recover damages for the demolition of a house built by plaintiff without previous notice under sec. 265 of that Act, the notice of action was a letter signed by plaintiff and dated from his place of residence, but did not state where the house in question had stood, nor the date of its demolition, nor did it state positively that an action would be brought. *Held*, the letter was not a sufficient notice of action." (*Devalji Rau* v. *President, Madras Municipality*, I. L. R. 18, Mad. 503.) See I. L. R. 25, Mad. 118, noted at page 133.

Notice not defective because damages not specified—Objection cannot be allowed for first time on revision.—When a notice sent to a municipality in compliance with section 261 of the Madras Act did not specify the amount claimed as compensation or damages, and upon the municipality stating that the notice was defective, the sender asked to be informed of the nature of the defect, but the municipality took no notice of the request. *Held*, that the suit was not liable to be dismissed for non-compliance with section 261 having regard to the decision in I. L. R. 14 Mad. 386.

Also that an objection by the municipality that the suit was barred is one which could not be raised for the first time on revision. In order to decide whether this objection was a valid one the Hight Court would have to go into the question whether the provisions of the Act had in substance and effect been complied with. This is a question of fact the Lower Court should have decided and the High Court in the absence of any evidence could not adjudicate on. (*Municipal Council of Kurnool* v. *Subbana Chetty* (1903) 13 Mad. L. J. 426.)

Notice not defective, because address and cause of action not detailed.—In a suit against the Municipality City of Madras for damages sustained by the plaintiff by reason of an accident occasioned to his horses through the ill-repair of a road within the limits of the municipality, it appeared that at the close of a correspondence between the plaintiff and the President of the municipality, the plaintiff, in a letter headed "Madras", stated that he had directed auctioners to sell the horses, and that he would "proceed against you by law to recover such loss or damage as I may have sustained", and added "kindly consider this as notice of claim under section 433 of Municipal Act No. I of 1884," and that the plaintiffs attorneys, in a subsequent letter, demanded payment of Rs. 1,000, "being the damages sustained by our client by reason of the neglect to keep in proper repair that portion of the road, &c.," and stated that if the sum claimed were not paid, the plaintiff would be "compelled to have recourse to law to recover the same without further notice."

Held (1), that the two letters should be read together (2) that the cause of action was stated sufficiently in the second of the above letters; and (3) that the plaintiff's address was sufficiently given in the first of the above letters, as defendants knew quite well where plaintiff was to be found.

The Court "must import a little common sense into notices of this kind (*vide* Pollock C. B., in *Jones* v. *Nicholls* 13 M. & W. 363.) See also *Osborn* v. *Gough* 3 B. & P., 550 where the defendant was a Magistrate, and no address beyond "Birmingham" was given. (*Ealee* v. *Municipal Commissioners, Madras*, I. L. R. (1891) 14 Mad. 386.)

Suit barred either way.—Plaintiff's cause of action against a municipality accrued on 30 August, he served the required notice under s. 363 Bengal Municipal Act (III of 1884) ("no suit shall be brought * * * until the expiration of one month next after notice &c.") on 28 October, and instituted the suit on 28 November on which date the plaint was returned for amendment and again presented on 1 December. The objection that the suit was premature was not taken in the written statement but in the course of argument. *Held*, that if the suit be considered to have been instituted on Dec. 1, it was barred under 2nd para. s. 363 ('no suit shall be brought after 3 months next after accrual of cause of action;'); and if it be considered as instituted on 28 Nov. it was premature by one day under the first para.

Held further that the plea as to notice could be taken in argument though not taken in the written statement. 5 C. L. R. 148; 34 C. 257 distinguished. 24 Cal. 306 and 25 A. 187 relied on. (*Bisambar Lal* v. *Chairman Municipal Board, Chapra*, 1910, 5 Ind. Cas. 81.)

5 **"And of the cause of action."**—The Bombay City Act provides "stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent, if any, for the purpose of such suit," and at the trial "plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice."

The Bengal and Calcutta Municipal Acts require the cause of action to be stated and the plaintiff's place of abode. The Madras Act requires the notice to "explicitly state the cause of action, nature of relief sought, amount of compensation claimed and name and aboda of plaintiff."

6 **Six months from date of act.**—The limitation is now prolonged from three months in the old Act, to six.

Madras Act, sec. 261 (1) and (2) are identical with this sec. 167. Sub-sec. (3) provides that no such action as is described in sub-sec (1) shall unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be commenced otherwise than within 6 months next after the accrual of the cause of action. Sub-sec. (4) provides that no action to be brought against the Chairman for anything done or default made in good faith, but all such actions as are maintainable are to be brought against the Municipal Council.

This limitation does not apply to, nor is notice necessary in, a suit on a contract executed under Act.—"The Council of a municipality under the Madras Act entered into a contract for the lighting of the town whereby it was provided that the deposit made by the contractor should be forfeited on any default made by him in carrying out the terms of the contract. One holding a decree against the contractor attached the amount of the deposit in the hands of the Municipal Council, but the Council subsequently passed a resolution in July 1888 declaring that the amount of the deposit had been forfeited. The decree holder having

purchased from the contractor his right to the money in question now sued in 1890 to recover it from the municipality. *Held*, (1) That the suit was not barred by the rule of limitation in sec. 261. (2) That the provision for forfeiture in the contract was penal and unenforceable and consequently that the resolution of July 1888 was *ultra vires*." (*Srinivasa* v. *Rathnasabapathi*. I. L. R. (1893) 16 Mad. 474.)

A suit for compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India must be brought within 90 days of the date on which the act or omission takes place. (*Article* 2. *Schedule II, Limitation Act.*)

When cause of action accrues in suit for damages.—In a suit for damages, the cause of action accrues when and as the damage occurs, and not at such time as the plaintiff may expend money in repairing such damage. Under section 48, the plaintiff is only entitled to recover the damages which accrue within three months of suit. *Crumbie* v. *Wallsand Local Board*, Q. B. D. (1891), Vol. I, page 503, referred to and followed. (*The Ahmedabad Municipality* v. *Himatlal Harilal* 1896, P. J. 675.)

Suit to recover tax illegally levied when not barred.—A levy of tax in each year gives a new and distinct cause of action and the payment of a 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. Where the valuation for the purposes of a municipal tax is made annually, a fresh cause of action for any over valuation annually arises, even if the valuation remains the same, and the fact that no objection was made to the valuation in one year does not render a suit based on an alleged overvaluation for the next year time barred provided that it was brought within the period, allowed by law, counting from the date of the overvaluation in the second year. (*Pitambardas* v. *Jambusar Town Municipality* (1892), P. J. 296. I. L. R. 17 Bom. 510.)

6 **Date of act complained of.**—*Notice in suit for recovery of possession of land.*—Plaintiff sued the municipality to recover possession of land from which they alleged they had been ousted by defendants' stacking stones thereon; and they regarded their cause of action as arising when the municipality refused to remove the stones.

Held, that it being proved that the land was Government land which on the coming into force of the Act vested in the municipality and had always been in their possession, there had been no ousting, and that in any case defendant's letter refusing to remove the stones could not be considered to be the cause of action.

Per Bayley J.—The municipality being rightly in possession, sec. 87 of the Panjab Act applied and the suit was barred.

Per Phear J.—Sec. 87 could only protect defendants if sued for *damages consequent* on a wrong done by them in the reasonable belief that they were exercising their lawful powers, not if they were sued by parties kept out of possession by their continued wrong doing. (*Poorno Chunder Roy* v. *Balfour, Chairman Municipality Howrah* 1868, 9 W. R, 535.)

In a suit to recover a portion of land of which the municipality had deprived plaintiff by heaping stones thereon and evicting his ryot therefrom. *Held* that the suit was not barred under sec. 87 Act III (B. C.) of 1864 requiring suit under the Act to be brought within 3 months. That section applies to actions brought against acts of the municipality done under the Act and for the purposes thereof. It was never intended to take away from individuals the right they have under the general law of the land of bringing suits to recover possession of immoveable property on proof of their title within 12 years. (*Price* v. *Khelat Chunder Ghose*, 1870, 13 W. R., 461.)

7 **Costs.**—Under the English Act the defendant (municipality or officer &c.) is entitled to security for costs from the plaintiff, and the Council is authorised, unless otherwise directed by the Court, to pay to its officer &c, costs incurred in defending any action, also all charges, expenses, damages, fine or otherwise.

Compare sec. 527 of the Bom. City Act, which is very similar, and which provides that "at the trial of any such suit (c) the plaintiff shall not be allowed to go into evidence of any cause of action, except such as is set forth in the said notice." Further that, if suit brought against municipal officer or servant, payment of any sum decreed, &c., may be paid to him out of the municipal fund.

[1]Powers of Police officers.

168. (1) Any Police Officer may arrest any person committing in his view any offence against any of the provisions of this Act or of any by-law thereunder, if the name and address of such person be

unknown to him, and if he decline to give his name and address, or if the Police officer have reason to doubt the accuracy of such name and address if given, and such person may be detained at the station-house until his name and address shall be correctly ascertained.

[2]Provided that no person arrested shall be detained without the order of a Magistrate longer than shall be necessary for bringing him before a Magistrate, or than twenty-four hours at the utmost.

[3](2) It shall also be the duty of all Police officers to give immediate information to the municipality of the commission of any offence against the provisions of this Act, or of any by-law thereunder, and to assist all municipal officers and servadts in the exercise of their lawful authority..

1 **Origin of section.**—This is sec. 87 of the old Act of 1873.

The provisions are now extended specifically to by-laws; sub-sec. (1) now corresponds with the Bom. City Act, sec. 516; and sec. 83, Panjab Act. Also sec. 252, Madras Act, which also provides for investiture of municipal servants with police powers.

Bengal Act, sec. 365, which is taken almost *verbatim* from sec. 57 of the Criminal Procedure Code says "When any person, in the presence of a Police officer, commits, or is accused of committing any offence under this Act," &c., and provides "for the taking of a bond for his appearance before a Magistrate, if so required" as soon as the correct name and address are ascertained.

2 **Period of arrest.**—The period under the old Act was 40 hours as in the Bom. City Act, sec. 516, but the reduction of the time has been to bring the law in accord with the Criminal Procedure Code, so that there might be no possibility of any conflict with the provisions of that Code.

3 **Sub-section (2).**—The marginal note should be, "Police to inform of offences, and assist municipal officers."

CHAPTER XI.—MUNICIPAL ACCOUNTS.

169. (1) Every municipality shall have prepared and laid before them, at their periodical general meetings, complete accounts of the receipts and expenditure of the municipality since the 1st day of April last preceding, and at a general meeting which shall, if possible, be held on such day between the 10th January and the 1st March as may be fixed in this behalf by the rules of the municipality, a complete account of the actual and expected receipts and expenditure for the [2]financial year ending on the 31st March next following, together with a budget estimate of the income and expenditure of the municipality for the financial year to commence on the 1st April next following.

[1]Presentation of accounts.

[3]Budget Estimates.

[4](2) The municipality shall thereupon decide upon the appropriations, and the ways and means contained in the budget of the year to commence on the 1st April next following. The

budget so sanctioned may be varied or altered from time to time, as circumstances may render desirable, at a special general meeting called for the purpose.

[5](3) The municipality shall, at the general meeting in April, or after audit of the past year's accounts, if such audit has not before that general meeting taken place, pass the accounts of the past year.

1 **Origin of section.**—This is sec. 88 of the old Act of 1873 (as amended by Bom. II of 1884), somewhat altered in form, so as to make the procedure more clear and precise, without at the same time tying the Municipality down too strictly.

Sub section 1, as amended by Bom. II of 1884, for the first time in the history of municipal administration threw upon the general body of each municipality instead of upon their President as formerly, the duty of having regular accounts and budget estimates prepared. This change was in harmoney with the other provisions of the new law which vested all powers and responsibilities in the Municipal Councillors themselves instead of in individual functionaries, leaving it to them to make such arrangements for their exercise or fulfilment, or, in certain cases, for their delegation, as they think fit.

Compare Bom. City Act, secs. 123—134. Bengal Act, secs. 71—72. The examination of municipal accounts used to be an important part of the duty of Collectors and their Assistants, but by G. R. 69 of 11 January 1886, Gen. Dep., it was pointed out that as the Act provides for the efficient audit once at least in every year of these accounts, and empowers the Collector or an Assistant or Deputy Collector authorised by him, to call upon a municipality to furnish any account which he may think it proper to inspect, these provisions seem ample to ensure the municipal accounts being properly kept.

Forms of accounts.—For some model rules and forms of accounts see those circulated with G. R. 4790 of 10 Sep. 1909, Gen. Dep. (*Vide* note 8 s. 46.)

The Act does not give Government the power of prescribing what accounts, budget forms, or other internal arrangements a municipality must adopt, but only of prescribing the form of accounts to be sent under section 90 (now 170). (G. R. 2886 of 8 October 1874, Gen. Dep.) But as by section 46 these accounts are to be prescribed by rules to be framed by the municipality subject to approval of Government, (*vide* note 8 to sec. 46), Government can of course refuse to sanction any other forms than those.

It will always be the duty of the auditors and of the superior officers who are responsible for the correctness of the accounts submitted to Government to see that the municipal demands of all descriptions have been duly estimated for in the Budget of the year, and have subsequently been properly dealt with by either recovery, remission or carrying forward for entry, as outstanding balances to be recovered, in the budget of the succeeding year. (G. R. 2886 of 8 October 1874, Gen. Dep.)

2 **"Financial year."**—This is not defined. This should have been altered to "official year," the definition of which by sec. 3 (10) corresponds to the well known term, financial year.

3 **Budget estimates.**—Though the annual accounts have to be forwarded to Government under sec. 171, in order apparently that Government may be in a position to exercise its power of control, these budget estimates do not appear to be required to be submitted.

Under the Madras Act, sec. 251, they have to be submitted "for sanction to Government who may pass such orders as they think fit." Under Bengal Act, sec. 73, copies of the estimates have to be lodged in the municipal office and notice given for inspection for 14 days during which time written suggestions by tax-payers may be made, and are to be considered by municipality at the next meeting. After the 14 days the estimates may be reviewed and then sent on to the District Magistrate and Commissioner, who further may sanction the same or return for re-consideration. These officers are also vested with certain powers of control.

Budget grants.—Government view with strong disapproval the practice, in order to prevent the lapse of budget grants, of withdrawing from the treasury at the close of the year moneys not required for immediate disbursement, and obtaining nominal receipts from the parties to whom they are eventually payable.

4 **Sub-section (2).**—The marginal note should be, "Budget to be sanctioned and may be altered." (*Vide* "*Contents.*")

Special meeting called for the purpose—"The plaintiffs, residents and rate-payers of he municipality of Surat, prayed that a certain resolution passed by the municipality, be declared illegal and void. The Sub-Judge held that the resolution was valid and dismissed the suit. * * * The High Court held as follows:—

"Passing to the question as to the legality of the resolution of 15 March 1883, it is clear that its object was to sanction an expenditure not provided for by the current budget of the year, in other words, to "vary or alter" the current budget appropriations, which, by sec. 88 of Bombay Act VI of 1873, clause 2, is to be done at a "special general meeting called for the purpose." It was argued that by section 12, the Vice-President has the power, whenever he may think fit, of circulating propositions amongst the Commissioners instead of convening a general meeting. That section, however, following immediately upon sec. 11, clearly applies to the special general meetings as contemplated by sec. 11, and which the Vice-President may call when he thinks fit, and cannot, we think, be intended to apply to a special general meeting which the Act expressly requires to be called for a particular purpose as is the case by sec. 88 when the budget is sought to be varied. It may be reasonably inferred that the legislature intended that as the budget for the general year is passed at a general meeting it should not be departed from without the same opportunity being afforded of open and full discussion. We are of opinion, therefore, that the resolution of 15 March 1883 could not of itself have the effect of giving legal sanction to the expenditure. (*Ratanchand Bhikhandas* v. *Surat City Municipality*, P. J. 137, 1888.)

5 **Sub-section (3).**—The marginal note should be, "Past year accounts to be passed." (*vide* "Contents.")

170. (1) The municipal accounts shall, from time to time, and once in every year at the least, be audited by such agency as may be prescribed in the rules of the municipality, or if the Governor in Council so direct, by a Government auditor.

[1]Audit of accounts.

(2) The auditor or auditors, shall, for the purposes of their office, have access to all the accounts and other records of the municipality.

(3) The municipality shall pay from the Municipal Fund such charges for the audit as may be agreed upon, or if the auditor is a Government auditor, then such charges as may be prescribed by the Governor in Council.

1 **Audit of accounts.**—Sub-secs. (1) and 2 are re-enacted from sec. 89 of the old Act of 1873. Compare Bom. City Act, secs. 135—138. Bengal Act, sec. 82.

Rules.—See sec. 46 (*b*) (ii).

Government Auditor.—This provision has been inserted as experience has shown that in many municipalities the audit is performed by persons unacquainted with accounts, and so the work is done neither satisfactorily nor punctually."

G. R. 4950 of 29 November 1889, Gen. Dep., circulated a proposal made by the Government of India that municipalities should not only bank with Government Treasuries, but should submit their accounts to the audit of the Accountant General, Bombay. This procedure, it was said, was in force in some other provinces, and though section 88 seems to allow any sort of audit which the municipality might approve, the Governor-General in Council doubted whether present arrangements were very satisfactory. The extra staff required by the Accountant General for this purpose would be paid out of Municipal Funds.

In G. R. 554 of 3 February 1903 sanction was granted, as a tentative measure, to a scheme for the audit of accounts of certain municipalities and this was confirmed by G. R. 3905 of 27 July 1903, Gen. Dep. Subsequently the Government of India sanctioned the extension of the system to all municipalities and G. R. 1068 of 27 February 1907. Fin. Dep. directed that the Accountant-General should be authorised to start the new local audit with effect from 1 April 1907. G. R. 2092 of 3 April 1907, Gen. Dep. issued a direction to this effect under this section, and a scale of fees to be charged.

G. R. 2123 of 5 April 1907 G. D., sets out certain proposals made by the Accountant General regarding the procedure of audit and the disposal of the audit note made in the case of each municipality which would be sent in original to the President, and a copy to the Commissioner and to the Local Government when necessary and a copy to the Collector. Government in approving these proposal directed that—

"2. The Accountant General should be informed that, as a rule, only reports regarding the discovery of serious errors which point to flaws in the system, regular leakage in receipts or fraudulent and irregular practices need be submitted to Government.

"3. A very brief report shall be submitted to Government at the end of each year giving the results of the audit as a whole and mentioning details of important discoveries which might suitably be brought to the notice of other municipalities for their guidance or which are of a character of which Government should be informed."

G. R. 5801 of 31 Aug. 1919 G. D., calls attention to the fact that "continued delays in disposing of the audit notes and objection statements of the Auditors largely discounts the utility of these audit operations, and Collectors should check any dilatoriness on the part of the local bodies under their control."

G. R. 10466 of 28 Dec. 1914, Gen. Dep. states.—

"11 The Governor in Council is impressed with the fact that the principal irregularities and defects which are year by year brought to notice in these audit reports and the orders of Government thereon are of such a nature that it should be within the capacity of any municipality to prevent or remedy them if it chose to devote the necessary care and attention to the matter, and he is therefore driven to the conclusion that in many instances that degree of care and attention is not forthcoming. Where this is unfortunately the case, it becomes the duty of the officers of the district to apply the requisite stimulus, and this cannot be more effectively done than by personal communication. It is accordingly suggested that district officers, when they visit a municipal town on tour, should make a point of calling for the last audit note on the accounts of the municipality and any previous audit notes that may still be awaiting final disposal, and should go through and discuss the several points appearing in them with the principal officers of the municipality. If this procedure is generally adopted, the municipalities will, it is believed, be more deeply impressed than they are apparently at present with the importance of amending the faults revealed by the audit, while at the same time they will profit by the advice and assistance which the district officers will be in a position to give them in undertaking this task; much correspondence, often of an undesirably controversial character, will also be avoided. Government trust that district officers will personally interest themselves in this branch of local self-government, improvement in which is indispensable if any real progress is to be made in the administration of local affairs by local bodies."

The Accountant General raised the question whether municipalities should under this section be required to make their own arrangment for auditing if at any time the Government audit did not take place and whether this section should not be amended. G. R. 2939 of 9 June 1909 G. D. states that "The Accountant General should be informed that Government do not consider that a case has been made out for amending section 170 of the Act. He should further be informed that Government consider it of great importance that the accounts of all municipalities and Local Boards should be audited once a year and that he should submit proposals for strengthening his establishment should that course be necessary. If the accounts of all municipalities are audited regularly once in every year, there will be no necessity for municipalities to employ stipendiary auditors."

The revised scheme for the extension of the Local Audit Department was sanctioned by G. R. 152 of 10 January 1913 Fin. Dep., and was completely brought into force from 29 April 1913.

Auditors are not "members of the establishment" of a municipality and cannot be punished by the municipality as such.

Abolition of audit fees.—This was directed in G. R. 1665 of 2 April 1908 Fin. Dep. The Government of India say that "It is now generally recognised that District Boards, Municipalities and Cantonments, are definite links in the machinery of Government, and that it is legitimate and often necessary to supplement their ordinary resources by contributions from the general exchequer. Holding this view, we are of opinion that one of the most obvious methods of assisting them, and one which is free from most of the objections attaching to a system of occasional contributions, is to forego the charges on account of services which must in practice necessarily be rendered to them by Government."

Transmission of accounts to Government.

171. The municipality shall, as soon as the annual accounts have been finally passed by them, transmit to the Governor in Council, or any officer duly authorised by him, in this behalf, a copy thereof, or an account in such form as the Governor in Council may prescribe, and shall furnish such details and vouchers relating to the same as the Governor in Council or such officer may from time to time direct.

This is sec. 90 of the old Act of 1873. Compare Madras Act, sec. 252, and see note 6, sec. 169. Also Bengal Act, sec. 81.

For Form of account, see Appendix. **D.** It is to be sent in with the Administration Report. (G. R. 3053 of 27 September 1876, and 1555 of 16 May 1875.) Vide Appendix **C.** Should be submitted to the Accountant General not later than the 15 September in each year. (G. R. 4143 of 25 May 1914 Gen. Dep.)

In Sind, the accounts of all the municipalities in Sind are to be published in the *Sind Official Gazette.* (G. R. 5061 of 2 September 1901, Gen. Dep.)

Separate accounts showing the whole of the transactions of each municipality under "Public Instruction" should be kept in the form (Appendix **H.**) which should be regarded as a supplement to the form of accounts prescribed by G. R. 2866, dated 8 October 1874. (G. R. 116 of 11 January 1887, Gen Dep.)

This form should be printed in continuation of G. R. 129 of 26 January 1887. (Now 2584 of 6 October 1894, vide sec 58.) G. R. 222 of 9 February 1887, Edn. Dep. and is to be kept as a standard form. (G. R. 904 of 8 March 1887, Gen. Dep.)

[1]Publication of account.

172. The quarterly and annual accounts of receipts and expenditure, and the budget when sanctioned, shall be open to public inspection, and shall be published in the vernacular language of the district in such manner as the municipality may prescribe in this behalf.

Inspection and publication of accounts—This is section 94 of Bombay Act VI of 1873, slightly altered.

Public inspection.—As to inspection, copies, and copying fees, see note 8, page 121.

By Bengal Act, section 71, the account books, quarterly and annual accounts, are to be open to inspection of any *tax-payer* at the municipal office on a day or days to be fixed. See note 1 section 169 as to inspection of estimates under Bengal Act, section 73. Madras Act, section 250-A, is identical, and adds "without charge."

Panjab Act, section 184 (*r*), provides for rules to be made as to conditions for inspection by "inhabitants paying any tax." Bombay City Act, section 124, provides for printed copies of the administration report and accounts being delivered to *any person* requiring the same on payment of such reasonable charges as may be fixed.

Publication.—Under the old Act, it was "in the vernacular language in any newspaper which may exist in or near the place or in any other manner which the municipality may prefer.'

"It is, under the Act, clearly a matter for the municipality to decide what course should be adopted in order to give local publicity to its accounts, and no orders from Government on the subject seem needed." (G. R. 2089 of 7 June 1882, Gen. Dep.)

CHAPTER XII.*—CONTROL.

[1]Collector's powers of inspection and supervision.

173. (1) The Collector shall have power—

(*a*) to enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by any munici-

pality, or any work in progress under them or under their direction;

(*b*) to call for any extract from the proceedings of any municipality or of any committee, or for any book, or document in the possession of or under the control of a municipality, and any return, statement, account, or report which he may think fit to require such municipality to furnish;

(*c*) to require a municipality to take into their consideration any objection which appears to him to exist to the doing of anything which is about to be done or is being done by such municipality, or any information which he is able to furnish and which appears to him to necessitate the doing of a certain thing by the municipality, and to make a written reply to him within a reasonable time stating their reasons for not desisting from doing, or for not doing, such thing.

[2](2) All or any of the powers given to the Collector by this section may be delegated by him to the Asssistant or Deputy Collector in charge of a taluka in so far as concerns any municipality other than a City municipality in such taluka.

***Government control.**—The object of this part is to provide a sufficient remedy against the various dangers to which a system of administration, dependent to a greater or less extent upon the inexperienced and untrained agency of non-official gentlemen is naturally exposed. It is the duty of Government to restrict the expenditure of Municipal Funds by municipalities to legitimate and reasonable purposes, and therefore means should be available for correcting any abuses or errors which may occur, but whilst adequate provision is made for this purpose, care has been taken to avoid undue interference with the independence and self-respect of the boards. The powers of control do not go much beyond those reserved to the Local Government Board in the English Public Health Act, and when they do so, the difference is due to the different circumstances of English and Indian communities. The more stringent powers need never be called into use, and it is hoped that no occasion will arise for using them, but if such occasion arises, it is clear that the powers reserved are not greater than are necessary to deal with it.

If a municipality persist in adhering to an illegal decision they will run the risk of an action being brought against them by some one interested in the proper administration of the Municipal Fund. (G. R. 22 of 4 January 1887, Gen. Dep.)

No appeal lies to Government in the case of any loss caused to a person by the action of a municipality. Under this Act, power is vested in certain officers of Government of interfering with the proceedings of a municipality or its officers. Appellants or petitioners should in all cases be referred to the municipality concerned, that is to the Managing Committee or to the Councillors generally. (G. R. 3350 of 13 September 1884, Gen. Dep.)

But this does not preclude an application to the Collector involving the exercise of his powers in fit and proper cases.

1 **Origin of section.**—This is sec. 37 of Bom. Act II of 1884, re-enacted.

Sub-sec. (1) is an extension of sec. 28 of the C. P. Act, and is almost identical with Panjab Act, sec. 176, and Madras Act, sec. 34 (1). See Bengal Act, sec. 62, which is somewhat similar.

Madras Act, sec. 33, provides that if the Chairman make default in carrying out any resolution of the municipality, the Collector, after giving him a reasonable opportunity of explanation may, by notice in writing, require him to carry it out, and in case of default, the Collector may assume the execution of such resolution and pass all necessary orders.

There is apparently no provision for a Municipality appealing to Government in case of any interference by the Collector or Commissioner with its duties or functions. Sec. 167 gives the right of appeal in certain cases only, but looking to the provisions of section 180 a municipality is not precluded in asking the Commissioner to review the orders of a Collector or the Governor in Council the orders of the Commissioner.

2 **Delegation to Assistant Collector.**—See note 5 page 14 and sec. 50 A (3) (*a*).

174. (1) If, in the opinion of the Collector, the execution of any order or resolution of a municipality, or the doing of anything which is about to be done or is being done by or on behalf of a municipality, is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of the peace, or is unlawful, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof.

[1]Collector's power of suspending execution of orders, &c., of municipalities.

(2) When a Collector makes any order under this section, he shall forthwith forward to the Commissioner and to the municipality affected thereby a copy of the order, with a statement of the reasons for making it; and it shall be in the discretion of the Commissioner to rescind the order or to direct that it continue in force with or without modification, permanently or for such period as he thinks fit.

Collector's order to be reported to Commissioner who may confirm or modify it.

(3) The Commissioner shall forthwith submit to the Governor in Council a report of every case occurring under this section, and the Governor in Council may revise or modify any order made therein, and make in respect thereof any other order which the Commissioner could have made.

Every case under this section to be reported to Government for their final orders.

1 **Origin of section.**—This is section 39 of Bombay Act II of 1884, and is borrowed from the C. P. Act, section 29.

Sub-section (1) corresponds with Panjab Act, section 177. See also Madras Act, section 35 (1) and (2), with which Bengal Act, section 63, corresponds; also with N. W. P. Act, section 60.

Action under this section should, it appears, be originated by the Collector only, though under section 180, it would seem that the Governor in Council or Commissioner may direct the Collector to take action. Under Bengal Act, section 63, action may be taken either by the Commissioner or Collector, and under Madras Act, section 65 (1) by the Governor in Council or Collector.

The Collector must form his own opinion which may, however, be one in agreement with that of any subordinate who had personally enquired into the matter. The orders must also be made by the Collector and not by the Assistant.

The circumstances justifying action must be limited to those specified. Where a municipality neglected to repair certain roads so as to be a danger to the public, was held to justify an order under this section.

Suit not maintainable for cancelling Collector's order.—A Municipal Board granted permission to B to build a temple. The District Magistrate acting under section 183 of the Municipalities Act empowering him to suspend the execution of any order of the municipality made an order cancelling the permission given by the Municipal Board, and the Local Government confirmed this order of the District Magistrate. B brought a suit for a declaration that he had a right to build the temple.

Held that the suit was not maintainable; held further, that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government, (1905) 2 A. L. J. R. 222 (noted p. 302) followed. (*Bulaki Das* v. *The Secretary of State for India in Council*, I. L. R. (1909) 31 All. 371.)

[1]Extraordinary powers of Collector in case of emergency.

175. (1) In cases of emergency the Collector may provide for the execution of any work, or the doing of any act, which a municipality are empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the health or safety of the public, and may direct that the expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the municipality.

(2) If the expense and remuneration are not so paid, the Collector may make an order directing any person, who for the time being has custody of any moneys on behalf of the municipality, to pay such expense and remuneration from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order.

(3) The provisions of sub-sections (2) and (3) of section 174 shall apply, so far as may be, to any order made under this section.

1 **Origin of section.**—This is sec. 40 of Bom. Act II of 1884, with some slight verbal alterations; sec. 40 itself being taken from sec. 30 of the C. P. Act. Madras Act, sec. 36 and Panjab Act, sec. 178, are very similar.

The old section simply provided that the Collector should make report to the Commissioner. The provisions are now amplified. Panjab Act, sec. 80, provides that with the report is to be sent "such explanation, if any, as the municipality may wish to offer." Madras Act, sec. 36 (3), provides that the report is to contain "reasons in full for the exercise of such powers," and a copy of this letter is to be sent at the same time to the municipality for information.

Expenses of carrying out order.—By sec. 74, Government has power to require a municipality to impose taxes to meet this extra expenditure, if funds not sufficient.

Civil Court will interfere if facts do not show emergency or necessity for public health or safety.—There was an old *chapri* projecting from the plaintiff's house and partly standing on a public drain abuting on a public road going past plaintiff's house. This *chapri* had been in existence for about 20 years, when plaintiff found it necessary to change the wooden posts on which it rested. Thereupon he took down the roof and the posts, and after fixing new posts put back the roof in its old place. While this was proceeding the municipality served plaintiff with a notice to stop building until it had been inspected by the President. No notice was taken of this and next day when the President inspected it, he found it had been completed. So he served plaintiff with a notice to remove the *chapri* within 3 days. This was under sec. 22 Central Provinces Municipal Act 1903 which authorises the President or in his absence the Vice-President in cases of emergency to direct the execution of any work or the doing of any act which the municipality is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public. Plaintiff not having complied with the notice the municipality demolished the *chapri*. Plaintiff then brought this suit for (1) being put into possession of the land upon which the *chapri* stood (2) for an injunction against the municipality not to obstruct the erection of a new *chapri* and (3) for damages. *Held* as to (1) that as part of the land was a public drain which vested in the municipality he could not get possession of so much of the land but only of the rest. As to (2) as the Act vested the municipality with a discretion to a certain extent in regard to the erection of buildings, the Court would not in advance of the exercise of such discretion make any order. If the discretion was capriciously or perversely exercised and injury resulted to the plaintiff, he might then have a cause of action but not till then. As to (3) plaintiff was not entitled to damage to his reputation nor to loss of trade, but only for the pulling down of his *chapri*.

Now the condition precedent to the coming into operation of the provisions of the section is that the case must be one of emergency and the safety or service of the public must necessitate the exercise of the extraordinary power it confers. Now an emergency means according to the dictionaries an unforeseen occurrence or combination of circumstances which

calls for immediate action or remedy. It involves the idea that but for such action, or remedy, some injury would be caused which could not afterwards be wholly repaired. Besides this, there is the further condition that the safety or service of the public must necessitate prompt action. No power exists independently of this section by virtue of which the individual action of the President may take the place of the collective action of the Committee. It follows that anything done which is not consistent with the powers thus conferred is illegal. "And private persons must be protected if they possess rights which are being infringed without legislative authority, however disastrous the results of such protection may be to the corporations thus for public purposes injuring private persons." (Brice's Treatise on *Ultra Vires*, page 518 (2nd edition.)

Now in this case the *chapri* had admittedly been permitted to exist for 20 years without its being considered objectionable in the public interests or without its immediate and instant removal being considered necessary for the general well-being. There is nothing on the record to show that a new state of things had come into existence during the closing days of the month of July necessitating prompt and immediate action. Their inaction in the matter for twenty years clearly threw on the Committee the burden of proving a state of emergency, even apart from the requirements of the section itself. In the absence then of any evidence that the protection of public interests justified the putting in motion the exceptional powers given by the section, I must hold that the plea as based on its provisions is of no avail. (*Ramdulary* v. *Chindwara Municipality*, 1910, 6 Ind. Cas. 431; s. c. 6 N. L. R. 53.)

[1]Power of Commissioner to prevent extravagance in the employment of establishment.

176. If in the opinion of the Commissioner the number of persons who are employed by a municipality as officers or servants, or whom a municipality propose to employ, or the remuneration assigned by the municipality to those persons, or to any particular person, is excessive, the municipality shall, on the requirement of the Commissioner, reduce the number of the said persons or the remuneration of the said person or persons:

Provided that the municipality may appeal against any such requirement to the Governor in Council, whose decision shall be conclusive.

1 **Commissioner's powers.**—This is section 38 of Bombay Act II of 1884, which was itself taken from section 29 of the C. P. Act. There is not necessarily any conflict between this section and the power given under section 46 (*b*) (*ii*) to a municipality to determine its staff of officers and employes, and fix their salaries, &c.; for there may be instances of a reduction of establishment being necessary, as for example, when the conditions of a town have changed financially or otherwise, even though the existing strength and cost may previously have received the sanction of higher authority. (G. R. 568 of 29 January 1901, Gen. Dep.)

Rules curtailing Commissioner's power, ultra vires.—Opinion of the Advocate General referred to in G. R. 5189 of 2 October 1903, Gen. Dep.:—

"Section 46 (*b*) (*ii*) must be read subject to section 176, and any rules which enforced would have the effect of depriving the Commissioner of the power of requiring the municipality to reduce its establishment or the pay of part of its establishment under section 176 would be *ultra vires* and void. No rules made under section 46 can be made so as to render them inconsistent with the Act. Thus all rules fixing establishments exist subject to the power of the Commissioner to insist on reductions under section 176, but subject to right of appeal.

The remarks of Kernon, J. in Indian Law Reports, 1 Madras, pages 120—121, illustrate the rules of construction under which a special provision apparently inconsistent with a general provision will be read as an exception to it. (See also note 7, section 46.)

[1]Governor in Council may require any City Municipality to appoint a Chief Officer, Health Officer, or an Engineer.

177. (1) It shall be lawful for the Governor in Council—

(i) to require, if in his opinion at any time such an appointment is necessary, the appointment of a [2]Chief Officer or of a Health Officer, or of an Engineer, or any one or more of such appointments, to be made by any City Municipality.

(ii) to make in his discretion an order vetoing the appointment, or continuance in any such office, of any person selected therefore or appointed thereto by any such municipality, and the tenure of such office by any such person shall cease and determine on and from the date on which such order is communicated to the municipality:

(iii) to require that any person appointed to be a Chief Officer or a Municipal Commissioner shall be invested by any such municipality with all or any of the powers which can under this Act or under any rules in force at the time be lawfully delegated to him, in addition to such powers as are conferred on him by section 183, or by chapter XIIIA, as the case may be.

(iv) to require that all or any of the powers referred to in section 144 or in section 145 (if the conditions under which that section comes into operation exist), shall be delegated by any such municipality, whether there be a Chief Officer or not, to the President, Vice-President or any such councillor as the Governor in Council may deem fit.

[3](2) Any requisition issued to the municipality under clause (i), (iii) or (iv) of sub-section (1) above shall be complied with within such time as the Governor in Council may in each case prescribe in that behalf.

1 **Appointments of Chief Officer, Health Officer or Engineer.**—This section is new. Bill No. 1 of 1914 proposed adding the following sub-section with the object of removing an ambiquity attaching to the provisions for the dismissal of a Chief Officer. A Chief Officer may be appointed either by Government under sec. 177, in which case it is proper that the power of dismissal should rest with Government, or by the municipality under sec. 182, in which case the municipality may by a majority of ¾ths dismiss him from office." (Statement of Objects and Reasons.)—

"(3) The power to dismiss, suspend or punish any officer appointed in accordance with a requisition under clause (*i*) of sub-section (1) shall vest in the Governor in Council alone, but it shall be lawful for the municipality, where they are of opinion in any case that the exercise of such power is desirable, to, make a representation to that effect to the Governor in Council."

The Select Committee, however, omitted this as they say.—"We think that it is not necessary to make any distinction in this respect between officers appointed at the requisition of Government and officers appointed by the municipality of their own accord, and that if three-fourths of the whole number of councillors desire to remove any such officer, there cannot be much objection to his removal."

2 **Chief Officer.**—"In the opinion of the Governor in Council it is essential that, when the official element in the municipalities is reduced, or altogether withdrawn, the executive authority of the municipalities should be strengthened; and for this purpose it is intended that the system which has proved so successful in Bombay should be adopted, as far as may be. The City Municipalities will, therefore, be required under section 177 of the District Municipal Act, to appoint Chief Officers, who, in addition to the powers which they will exer-

cise under sections 184 and 185, should also be invested with wider powers by rules issued under section 46 of the Act. The municipalities will doubtless recognise the advantage of delegating the widest possible powers to Chief Officers, while retaining effective control over the administration in their own hands." (G. R. 4614 of 16 July 1908 G. D.) Noted sec. 11 p. 24.

It is the intention of Government that in municipalities other than City Municipalities also the appointment of an Executive Officer should be made a condition of the extension of the elective principle. The concession will be withheld if this condition is not accepted. In the opinion of Government the appointment of an Executive Officer who should be a Government servant is necessary in order to secure good municipal government. (G. R. 6176 of 15 Oct. 1908, Gen. Dep.)

It is not necessary to insist on this condition when only the privilege of selecting their own President is conferred on municipalities under the order contained in G. R. 4614 of 16 July 1908. (G. R. 7010 of 25 Nov. 1908, Gen. Dep.)

"The irregularities brought to notice show that the provision of trustworthy and capable executive officers is the first requisite of efficient local administration; administrative bodies composed of a large number of members cannot themselves, or even through committees, discharge executive duties satisfactorily." (G. R. 3924 of 30 July 1909, Gen. Dep.)

"In view of the opinions of the Commissioners and the wishes of the municipalities concerned, the proposal for the formation of Chief Officers of municipalities into a Provincial or Divisional Service is abandoned.

2. The Governor in Council is pleased to direct that the City Municipalities should be allowed a free hand in regard to the creation and filling up of the appointment of Chief Officer, subject to the control which is vested in Government under sections 177 and 182 of the District Municipal Act. Such of the City Municipalities as have not hitherto employed Chief Officers should be required to appoint them.

3. In the Town Municipalities to which the privilege of extended franchise has been conceded, the executive officer should, as decided in G. R. 6176 of 15 October 1908, be a Government servant.

4. The municipalities should be asked to delegate to their Chief Officers the widest possible powers, while retaining in their own hands effective control over the general course of the administration. (G. R. 4767 of 9 Sep. 1909 Gen. Dep.)

[3] **Sub-section (3).**—The marginal note should be, "Time within which requisition must be complied with." Failure to comply with requisition may entail supersession under sec. 179.

178. (1) When the [2]Governor in Council is informed, on complaint made or otherwise, that a municipality have made default in performing any duty imposed on them by or under this Act, or by or under any enactment for the time being in force, the Governor in Council, if satisfied after due inquiry that the municipality have been guilty of the alleged default, may direct the Commissioner to fix a period for the performance of that duty.

[1]Power of Government to provide for performance of duties in default of municipality.

[3](2) If that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the municipality.

(3) If the expense and remuneration are not so paid, the Commissioner may make an order directing any person, who for the time being has custody of any moneys on behalf of the

municipality, to pay such expense and remuneration from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order.

1 **Origin of section.**—This is, with some slight alterations, Bom. Act II of 1884, sec. 42, which followed Panjab Act, sec. 179, Madras Act, sec. 37, and Bengal Act, sec. 64, and C. P. Act, sec. 31.

"1. If the municipality will not impose such taxes as can be approved by Government and the fund becomes insolvent or approaches insolvency, Government may properly supersede it under sec. 43 of Bom. Act II of 1884 (now sec. 179) as incompetent or persistently in default.

2. No doubt the Governor in Council can supersede a municipality without making use of sec. 42 (now sec. 178) of the Act, but this section is of course intended to be used in appropriate cases, and a step taken under it is less extreme than a complete supersession of the municipality under sec. 43. Notice must be given of the specific duty to be performed and this affords to the municipality a *locus penitentiæ*. The Commissioner ought to draw up a moderate scheme for each of the objects in regard to which the municipality has failed to do its duty and call on the municipality to carry it into effect within a stated time. In case of default he can then himself act under sec. 42. Should any ulterior measures become necessary, he can make the requisite reference to Government for action under sec. 43. (G. R. 565 of 29 February 1892, Gen. Dep.)

Compare Bom. City Act, sec. 518 and 520. See note 2 to sec. 54, page 176.

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

Under the Panjab Act this power is vested in the Commissioner in respect to 1st class municipalities, and in the Deputy Commissioner as to other municipalities; and by sec. 180 these officers have to forward to the Local Government a copy of such order with the reasons for making it and with such explanation, if any, which the municipality may wish to offer.

3 **Cost of carrying out order.**—Even after a person is appointed to perform the duty it is still undoubtedly the duty of the municipality to impose taxation sufficient to enable the municipal Fund to meet this and all other legitimate charges upon it.

By sec. 74 Government have power to require a municipality to impose a tax or taxes to meet any expenditure on this account that may be necessary if municipal funds are insufficient.

179. (1) If, in the opinion of the Governor in Council, any municipality are not competent to perform, or persistently make default in the performance of, the duties imposed on them by or under this Act, or otherwise by law, or exceed or abuse their powers, the Governor in Council may, by an order published, with the reason for making it, in the ***Bombay Government Gazette***, declare the municipality to be incompetent or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

[1]Power of Government to supersede municipality in case of incompetency, default or abuse of power.

(2) When the municipality are so superseded, the following consequences shall ensue:—

Consequence of exercise of such power.

(*a*) all councillors of the municipality shall, as from the date of the order, vacate their offices as such councillors;

[2](*b*) all powers and duties of the municipality shall, during the period of supersession, be exercised and performed by such

person or persons as the Commissioner from time to time appoints in that behalf;

(*c*) all property vested in the municipality shall, during the period of supersession, vest in His Majesty.

[3](3) If, after enquiry made, the Governor in Council so directs, the period of supersession with all the consequences aforesaid shall from time to time be continued by an order published as aforesaid until such date as may be fixed by the Governor in Council for the re-establishment of the municipality.

Power after enquiry to continue period of supersession.

[4](4) The municipality shall be re-established by the election or appointment of new councillors under the provisions of this Act applicable thereto,

(*a*) if no direction has been made under sub-section (3), then on the expiration of the period specified in the order of supersession under sub-section (1), and

(*b*) if a direction has been made under sub-section (3), then on such date as is fixed under that section for the re-establishment of the municipality.

1 **Origin of section.**—This is section 43 of Bombay II of 1884, with some verbal alterations, sub-section (2) is old section 43, re-produced almost verbatim and follows section 4-B (3) (*a*), Madras Act; section 128 (2), C. P. Act; section 182 (2) of the Panjab Act; and Bengal Act, section 66. Sub-section (3) is new and (4) is mostly new. The whole, with the exemption of sub-section (3), is taken from the C. P. Act, section 128, and Panjab Act section 182.

This corresponds with section 4-B of the Madras Act, which, however, provides that "no such orders shall be passed without previously intimating to the Municipal Council the grounds upon which the proposal is based, and considering the explanations and objections if any, of the Municipal Council."

Section 4 gives power to Government to declare a municipality to cease to exist.

The Panjab Act requires the previous approval of the Governor-General in Council, except in case of emergency, when report must be made for orders. Sub-section (1) follows also Bengal Act, section 65.

"*In the opinion of the Governor in Council.*"—These words are necessary in order to check litigation, as, without them, legal proof might possibly have been required that the municipality were not competent or persistently made default, &c."

2 **Powers, &c., of person appointed.**—Under the old Act, the word was "may." Now it is made clear that Government is bound to exercise all the powers and perform all the duties of a superseded municipality, and must therefore discharge its liabilities. (*Vide* G. R. 1476 of 5 April 1876, Gen. Dep.)

"An Assistant Collector appointed under this clause has the same right to appeal from decrees made against the municipality as that body had before the supersession. The decrees being against it and not against its agent or officer, the case differs from *Nubeen Chunder Paul* v. *Stephenson*, 18 Cal. W. R. 534.

"As to the other appeal brought by the Vice-President, against whom there was nf, decree, and who had no authority or pretence for representing the municipality, we are oo opinion that the more regular course would have been for the Assistant Collector, after being appointed as a substitute for the municipality, either to have presented a separate appeal or to have applied to be made a party appellant in the District Court. But following sec. 578 of the Code of Civil Procedure we treat the defect of procedure as a mere irregularity,

Baboo Hurdey Narain v. *Pundit Baboo Rooder*, 4 R. 11, L. A. 26. (*Patvari Vithaldas* v. *Dhanduka Municipality*, 1894, P. J. 444.)

Limitation of powers of person appointed.—The Local Government superseded the Commissioners of a certain municipality, under sec. 65 of the Bengal Municipal Act, for a certain period, and the Sub-Divisional Officer was appointed as the person by whom all the powers of the Commissioners should be exercised. The Local Government reduced the number of Commissioners at the recommendation of the Sub-Divisional Officer proceeding under sec. 9 (*e*), and re-established the municipality with this reduced number of Commissioners who imposed certain new rates, to which plaintiff was assessed to the extent of Rs. 3. He at first refused to pay, but under pressure of the issue of a distress warrant, did eventually pay and then brought a suit for recovery of the amount levied and damages. *Held* that the suit came under Article 35 (*j*) of the Provincial Small Cause Courts Act of 1887 as being a "suit for compensation for illegal distress" and therefore was not cognizable by such a Court and no 2nd appeal lay in such a suit.

Held also that the "Commissioners at a meeting" and not the "Commissioners" had the power under sec. 9 Cl. (*e*) to recommend the alteration in the number of the Commissioners, and, therefore, the new rates imposed by the re-constituted body, which was not duly constituted, were not legally imposed and the appellant was not bound to pay them. (*Bepin Behary Sen* v. *Chairmain Santipur Municipality* 1909, 1 Ind. Cas. 388.)

3 **Sub-sec. (3).**—The old Act contained no provision for a renewal of the period of supersession and it was ruled in G. R. 2348 of 2 July 1891, Gen. Dep., that Government had no power to continue the period. Though the re-establishment of a superseded municipality as soon as possible may be desirable, yet it might occur that a re-construction at the end of the period first specified may be very inconvenient or inadvisable. For instance, the finances of the municipality may not have been brought into proper order, the neglect of sanitary works may not have been repaired, and practically the same councillors who made default before may be re-elected on the suspension ceasing.

4 **"Shall be re-established."**—This section avoids all reference to the abolition of a municipality and seems to contemplate that a municipality once superseded *must be re-established*, unless indeed under sub-sec. (3), the supersession is renewed *ad infinitum*. No provision is made for abolition. No doubt sec. 4 gives power to Government to declare a municipality to cease to exist, but the special and emphatic provisions of this sec. 179 seem to require that if Government elect to supersede a municipality, it cannot follow this with abolition without giving another chance by re-establishing it. There however may be circumstances in which a municipality may be so continuously contumacious as to require its abolition at the close of or during the period of suspension, and this section ought to make provision for such an exercise of power.

The Madras Act requires that before abolition, as in case of intended supersession, intimation should be given to the municipality concerned. (*Vide* note 1.)

Rights of superseded municipality devolve on re-establishment.—The 'supersession' of a Municipal Council under section 4-B (1) (*b*) of Madras Act IV of 1884 is only a suspension of such body for a limited period and such supersession is different from and has not the effect of a dissolution under section 4-B (1) (*a*). The 'reconstitution' of such a Council under section 4-B (3) (*b*) is the revival of the old corporation and not the creation of a fresh one, and all the rights and liabilities of the superseded Council will devolve on the Council so reconstituted as its rightful successor.

Where the suit had been brought against a municipality which was subsequent to the decree and during the pendency of the appeals, suspended, but after a period restored, *held* that plaintiff could proceed against the restored municipality. (I. L. R. 29 Mad. 539, noted section 167.)

"*New councillors.*"—Does this mean that the councillors of the superseded municipality are not eligible for re-election or re-appointment ?

The Madras, Bengal and C. P. Acts provide that the members who had to vacate on the supersession "shall not be deemed disqualified for re-election or re-appointment as such."

Powers of Government and of the Commissioners over Collectors &c.

180. In all matters connected with this Act, the Governor in Council, each Commissioner and each Collector shall, respectively, have and exercise the same authority and control over the Commissioners, the Collectors and their subordinates, as he has and exercises over them in the general and revenue administration.

This is sec. 44 of Bom. Act II of 1884, with some verbal alteration. It is adopted from sec. 33 of the C. P. Act, and sec. 185, Panjab Act.

CHAPTER XIII.—SPECIAL PROVISIONS FOR CITY MUNICIPALITIES.

181. (1) The Governor in Council may, at any time, in respect of any municipal district which contains a population of not less than fifteen thousand inhabitants, declare, by notification, the municipality thereof, which shall be specified in the notification, to be a City Municipality.

[1]Constitution of City Municipalities.

(2) The Governor in Council may, in respect of any municipality so declared, or in respect of any municipality specified in Schedule E, direct by notification, specifying such municipality, that from such date as shall be fixed by the notification containing such direction, the municipality specified shall cease to be a City Municipality and such municipality shall, on the date fixed, cease to be a City Municipality accordingly.

1 **Constitution of City Municipalities.**—*Population.*—In the Bill, the minimum was 10,000, but the Select Committee considered it desirable to make it 15,000. It was proposed to increase this to 20,000, as it was urged that municipalities with less population could not bear the expenses of highly paid Chief Officers, &c., but this was rejected as it was pointed out that the proposal would exclude, without good reason, some municipalities from the privileges of a City Municipality which they are already enjoying. It was also pointed out that this section does not make it necessary that every town of not less than 15,000 be a City Municipality; it merely gives a town, with the prescribed minimum population, the possibility of becoming a City Municipality. Moreover the appointment of Chief Officer is in the discretion of the municipality itself.

182. (1) Any City Municipality may, if they think fit, appoint a Chief Officer and a Health Officer and an Engineer, or any one or more of such officers, or such municipality may in their discretion appoint one person, whether temporarily or permanently, to discharge the duties of any two or of all such offices.

[1]City Municipality may appoint a Chief Officer, Health Officer and Engineer.

(2) No such officer shall, save with the previous sanction of the Governor in Council, be removable from office unless by the votes of at least three-fourths of the whole number of councillors.

(3) When a Chief Officer shall have been appointed, all other officers and servants employed by the municipality shall be subordinate to him.

1 **Origin of section.**—In the City of Bombay, the Municipal Commissioner, whose office corresponds with that of a Chief Officer, is appointed by Government for a renewable period of 3 years; and the appointment by the corporation of the Engineer and Health Officer, each for a renewable term of 5 years, is subject to Government confirmation.

It was proposed to make the appointment of the Chief Officer subject to Government approval, as it was said that there has not been sufficient experience yet in the matter of Chief

Officer to say how far City Municipalities would be likely to appoint the best man and put aside feelings of caste or other partiality; that such officers' responsibilities were so great that Government could not afford, in the interests of the rate payers, to risk an inefficient man being appointed, either from jobbery or ignorance. The Select Committee however considered it better to leave the freedom of choice of municipalities in this respect as little impaired as possible.

It was proposed to provide in this section for the "suspension" of these officers in the same way as their "removal," but the suggestion was not adopted.

These appointments are, it will be observed, optional with the municipality, but as the whole object of constituting the municipality a City Municipality, is to legalise the appointment of these officers, if a municipality do not exercise the option, Government may, under sec. 177, require the appointment to be made, or under sec. 181 (2) may direct that it cease to be a City Municipality.

Under the Bombay City Act, the appointment of these officers is obligatory, and if default made, Government may appoint them.

The Bill, as originally framed, provided that "the municipality shall upon the requisition of the Governor in Council" appoint these officers. It also provided that they may be removed at any time from office for misconduct, neglect or incapacity, but not without the sanction of the Commissioner. These provisions have been omitted by the Select Committee, and all the officers exempted under this section.

In the City of Bombay, the Municipal Commissioner must be removed, if not less than ⅘ths of the whole corporation vote for it, and Government may remove him, if incapable of performing the duties of his office or if guilty of misconduct or neglect. The Engineer and Health Officer are removable for misconduct, neglect or incapacity, on votes of not less than ⅔rds of the members present at the meeting.

Chief Officer.—As to Government policy in connection with the appointment of this officer, see para. 8 of the G. R. quoted in the Preface to this edition.

Powers of Chief Officer.

183. The Chief Officer in a City Municipality shall exercise the powers hereinafter specified, and such other powers as may be delegated to him by the municipality under the provisions of this Act:

(*a*) he shall have power, subject to the provisions of this Act and of the by-laws for the time being in force thereunder, to grant, give and issue under his signature all licenses and permissions which may be granted or given by a municipality under this Act, other than licenses for markets or slaughter-houses; and

(*b*) he may, subject to the provisions aforesaid, at his discretion suspend, withhold or withdraw any license, in any case in which he is empowered as aforesaid to grant or give a license, and in which the municipality may under the provisions aforesaid, suspend, withhold or withdraw such license;

(*c*) he shall receive and recover and credit to the municipal fund all fees payable for licenses and permissions granted or given by him under the powers aforesaid;

(*d*) he may make such requisitions by written notice, give such written consent or permission, issue such orders and prohibitions, and exercise all such powers as may be made, given, issued or exercised by a municipality under any provisions contained in—

(i) sub-section (2) of section 91,

(ii) sub-section (2), sub-section (3) or clause (*a*) of sub-section (5) of section 96,

(iii) section 102,

(iv) sub-section (1) of section 110,

(v) section 111,

(vi) section 114,

(vii) section 115,

(viii) section 118,

(ix) section 119,

(x) section 121,

(xi) section 122,

(xii) section 123,

(xiii) section 124,

(xiv) section 125,

(xv) section 126,

(xvi) section 127,

(xvii) section 128,

(xviii) section 130,

(xix) sub-section (1) of section 131,

(xx) section 132,

(xxi) section 134,

(xxii) section 142,

(xxiii) section 143,

(xxiv) clause (*b*) of sub-section (2) of section 144.

184. The Chief Officer shall have, independently of such powers as may be delegated to him by the municipality in this behalf, power—

[1]Chief Officer's powers of appointment and punishment.

(*a*) to appoint—

(i) without the previous sanction of the municipality, to any post the monthly salary for which as fixed by rules made under clause (*b*) of section 46 does not exceed Rs. 15, and

(ii) with such previous sanction, in each case, to any post under the municipality other than that of the Health Officer, Engineer or Chief Accountant, and

[2](*b*) to fine, reduce, suspend, or dismiss any municipal servant whose salary does not exceed Rs. 15, and, subject to the provisions of the rules for the time being in force, any other municipal officer or servant not being the Health Officer, Engineer, or Chief Accountant, provided that in respect of any punishment other than a fine not exceeding one week's salary his order shall be subject to an [3]appeal to the municipality.

1 **Origin of section.**—The powers inherent *ex-officio* in a Chief Officer have been considerably curtailed from those as laid down in the original Bill, but provision has been made for an extension of the powers by delegation by the municipality. This section as altered makes it clear that these powers are those which any Chief Officer, *ipso facto*, will enjoy, independently of any that may be delegated to him by the municipality.

It was suggested that specific legislation was required to define the powers of appeal against the Chief Excutive Officer's orders, and in particular that no appeal against his orders should go beyond the Managing Committee. Otherwise his influence and power of work will be gone, if, when he, with the approval of the Managing Committee, has taken certain steps, or if on appeal, the Managing Committee have confirmed his action, a further appeal should be to the general body, a meeting of which may not take place for a considerable time. It was urged that the executive would be paralysed if perpetual appeals against its order be permissible in a municipality, just as in any other sphere of administration. It was suggested, therefore, that the words "Managing Committee," should be substituted for "municipality." It was submitted that it was not the province of the general body of Committees to interfere in executive details, but to frame rules and lay down principles for the guidance of the executive. It was also urged that in a City Municipality the time of the general meetings was too valuable to be taken up with petty cases of the punishment of employees. These suggestions were however not adopted.

Limit as to pay.—In the Bill the amount was not to exceed Rs. 25. It was said that if this limit were retained, except in very few cases, all subordinate appointments would be practically in the exclusive gift of the Chief Officer, which was not desirable.

2 **Punishment of officers and servants.**—*Subject to the provisions of rules.*—The rules will be under sec. 46 (*e*), for "determining the mode and conditions of appointing, punishing or dismissing any such office or servant."

If no rules made there would be no limitation to the Chief Officer's power to punish any servant or officer except those here exempted, subject only to the right of appeal. But the rules may by imposing "modes and conditions" take away all power to punish servants whose pay exceeds Rs. 15.

3 **Appeals from orders of Chief Officer.**—G. R. 6225 of 20 Oct. 1911, Gen. Dept., decided that these appeals should be heard, not by the Managing Committee, but by the General Committee, and that the disposal of appeals in the case of orders made in the exercise of powers delegated to him, the municipality could regulate these under sec. 46 (*a*).

Delegation of Chief Officer's powers.

185. The Chief Officer may, with the sanction of the municipality, delegate any of the powers conferred on him to any officer subordinate to him.

Chief Officer may take part in discussions.

186. (1) The Chief Officer may, with the permission of the president, or in virtue of a resolution passed in this behalf at any meeting of the municipality or of any committee, make an explanation in regard to any subject under discussion at such meeting, but shall not vote upon or make any proposition at any such meeting.

The Bombay City Act, sec. 36 (*t*), provides that "the Commissioner shall have the same right of being present at a meeting of the corporation and of taking part in the discussions thereat as a councillor, and with the consent of a majority of the councillors present, ascertained by show of hands, without discussion, may at any time make a statement or explanation of facts, but he shall not be at liberty to vote upon, or make any proposition at such meeting." See 49 (*w*) makes exactly the same provision in regard to the standing committee.

CHAPTER XIII-A.

THE MUNICIPAL COMMISSIONER, HIS POWERS AND DUTIES.

186-A. (1) Notwithstanding anything contained in chapter XIII, the Governor in Council may make an appointment of a Municipal Commissioner—

[1]Appointment of Municipal Commissioner.

[2](*a*) for any municipal district which contains a population of not less than one hundred thousand inhabitants; and

(*b*) for any other municipal district on the application of the municipality in this behalf, provided that such application has been previously supported by not less than [3]two-thirds of the whole number of councillors.

(2) The population of a municipal district shall be deemed to be the population as ascertained in the latest census taken in such municipal district, unless the Governor in Council thinks fit to direct that a special census may be taken in such municipal district for the purpose of ascertaining the population, whereupon the population shall be deemed to be the population as ascertained in such special census.

Population how ascertained.

(3) When the appointment of a Municipal Commissioner has been once made for a municipal district which contained at that time a population of not less than one hundred thousand inhabitants as ascertained in sub-section (2), such appointment shall not cease by reason only of the fact that the population of such municipal district has fallen short of one hundred thousand inhabitants.

Subsequent reduction of population.

(4) On the appointment of a Municipal Commissioner the appointment of a Chief Officer, whether made under section 177 or section 182, shall forthwith terminate: provided that the appointment of a Municipal Commissioner shall not be made until such notice has been given to the Chief Officer, if any, as the terms of his appointment entitle him to receive and until the expiry of the period specified in such notice.

Appointment of chief officer to cease on appointment of Municipal Commissioner.

(5) The Governor in Council may at any time discontinue the appointment of a Municipal Commissioner for any municipal district for which such appointment has been made.

Discontinuance of appointment.

1 **Origin of section.**—The whole of this chapter was added by the Amending Act of 1914, section 30.

It was proposed in Council to add a clause limiting the power of Government to appoint any one out of 3 persons selected by the municipality, as it was urged that as the

municipality have to provide the pay, they should have a voice in the appointment; but the proposal was not supported as it was considered undesirable, and Government would always be the best judge of the proper man.

Although it was universally admitted that in the case of the larger municipalities committee government was a failure, as in such municipalities large sums of money had to be handled and important and complex questions often came up for decision it was impossible for the work to be satisfactorily performed by committees, in Council the opponents to this measure put forward many proposals for avoiding, what was unhappily termed a 'thrusting' upon certain municipalities of a Municipal Commissioner. One such proposal was that in lieu of this chapter XIII-A, such municipalities should be empowered to invest the Chief Officer, in addition to the powers mentioned in section 183 and those to be delegated to him, with the powers mentioned in section 186-C. This proposal was, however, rejected.

As to the policy of Government on this subject see para. 8 of the G. R. quoted in the Preface to this edition.

2 **"Not less than 100,000."**—In the Bill it was 150,000 but the Select Committee said as this limit included then only one city (Ahmedabad) it was too high, and it added the clause (*b*) so as to enable important municipalities to apply, if so disposed, for the services of a Municipal Commissioner.

3 **"Two-thirds of the whole number."**—This was as in the original Bill. The Select Committee suggested that it should be one-half but after discussion in Council the proportion as in the Bill was adopted.

186-B. (1) A Municipal Commissioner shall hold office for a period of three years, in the first instance, and thereafter for such further period as the Governor in Council may in each case determine.

Term of office.

(2) A Municipal Commissioner may be removed from office at any time by the Governor in Council if it shall appear to the Governor in Council that he is incapable of performing the duties of his office or has been guilty of any misconduct or neglect which renders his removal expedient.

Removal from office.

(3) A Municipal Commissioner shall be forthwith removed from office by the Governor in Council on the application of the municipality in this behalf, provided that such application has been previously supported by not less than three-fourths of the whole number of councillors.

Origin of section.—This is taken from sec. 54 of the Bom. City Act with some modifications.

In the Bill the period was a "renewable period of 3 years" but the Select Committee omitted the word renoveable and inserted the succeeding sentence in order "to give a certain amount of latitude to the Governor in Council when the time comes to extend the term of office."

Sub-section (3) was based on the principle that "although it is desirable that the Municipal Commissioner should feel reasonably secure in his appointment, it is not desirable that he should be entirely independent of the good will of the councillors as a body." This was inserted by the Select Committee. The Bill merely provided that the municipality might if so desired make a representation to Government for his removal. In Council it was proposed that the proportion in favour of removal should be ⅔rds or ⅘th as in the Bombay City Act, but this was not adopted.

186-C. (1) A Municipal Commissioner shall receive from the municipal fund such monthly salary as the municipality shall, subject to the approval of the Governor in Council, from time to time determine.

[1]Salary of Municipal Commissioner.

(2) A Municipal Commissioner shall devote his whole time and attention to the duties of his office as prescribed in this Act or in any other enactment for the time being in force, and shall not engage in any other profession, trade or business whatsoever:

Prohibition of engagement in other business.

Provided that he may at any time, with the sanction of the municipality, serve on any committee constituted for the purpose of any local inquiry or for the furtherance of any object of local importance or interest.

1 **Origin of section.**—Compare this with section 57 of the Bombay City Act, from which it is taken with certain notifications.

In the Bill it was for the Governor in Council alone to determine the salary, but in Council this was altered as it now stands so that, though a municipality has not the right to select its Municipal Commissioner, it has the right to decide with Government approval, what his salary should be.

Salary of Municipal Commissioner.—In the Bill this was to be determined by the Governor-in-Council alone, but after some discussion in Council this took the form as now shown after a proposal that the salary should be determined by the Governor-in-Council in consultation with the municipality was rejected, as also the suggestion that Government and the muicipality should each pay a moiety of the salary.

2 **Sub-section (2).**—This is taken from the Calcutta Municipal Act, section 31.

In the Bill it was contemplated that he might also hold the appointment of officer in charge of the City Survey Office or any other appointment within the same city to which the Governor-in-Council might nominate him, but the Select Committee were of opinion "that he should hold no office other than that of Municipal Commissioner."

186-D. (1) The Governor in Council may, from time to time, with the assent of the municipality, grant leave of absence for such period as he thinks fit to a Municipal Commissioner.

Leave of absence.

(2) The allowance to be paid to a Municipal Commissioner, while absent on leave, shall be of such amount, not exceeding his salary, as shall be fixed by the Governor in Council:

Leave allowance.

Provided that, if the Municipal Commissioner is a salaried servant of Government, the amount of such allowance shall be regulated by the rules for the time being in force relating to the leave allowances of salaried servants of Government of his class.

(3) During any absence on leave, or other temporary vacancy in the office, of a Municipal Commissioner the Governor in Council may appoint a fit person to act as Municipal Commissioner. Every person so appointed shall exercise the powers and perform the duties conferred and imposed by or under this Act or by any other enactment for the time being in force on the person for whom he is appointed to act, and shall be subject to the same liabilities, restrictions and conditions to which the said person is liable.

Appointment of substitute.

Origin of section.—This is taken from sec. 59 of the Bom. City Act, which sec; also sec. 35 of the Calcutta Act.

It is made clear that a person other than a salaried servant of Government may be appointed.

Contributions from municipality towards pension and leave allowances of Municipal Commissioner.

186-E. (1) When a salaried servant of Government is appointed to be a Municipal Commissioner, the municipality shall, unless specifically exempted wholly or in part from liability by the Governor General in Council, contribute to his penison and leave allowances to the extent required by proviso (*b*) to section 46.

(2) When a person other than a salaried servant of Government is appointed to be a Municipal Commissioner, the municipality shall pay from the municipal fund the whole of his leave allowances fixed, as hereinbefore provided, by the Governor in Council, and may, with the sanction of the Governor in Council, grant him a pension or gratuity on retirement, or grant a compassionate allowance to his family on his death.

Origin of section.—This is taken from sections 29 and 30 of the Calcutta Municipal Act, 1890.

The Select Committee remark.—"The rules regulating the amount of the contribution for the pension and leave allowances of the Municipal Commissioner are contained in Chapter 39 of the Civil Service Regulations. Briefly stated, the contribution is levied at the rate of five-sixteenths, in the case of a Government Officer lent from one of the European Services," and the rate of one-fourth, in other cases, of the assumed pay of the officer. In return for these contributions Government accept the responsiblity for the officer's leave allowances of all kinds and for his pension calculated on his sanctioned salary."

Unless specifically exempted, &c.—It was pointed out by the Select Committee as also in Council that it was in consequence of these rules and regulations of the Government of India that these provisions were embodied, but in order to leave room for a representation to the Government of India in the matter, the words "unless specifically exempted wholly or in part from liability by the Governor General in Council" were introduced.

Power of municipality to require returns, reports or production of documents.

186-F. (1) The municipality may require the Municipal Commissioner to furnish them with—

(*a*) any return, statement, estimate, statistics or other information regarding any matter appertaining to the administration of this Act or to the municipal government of the municipal district;

(*b*) a report on any such matter:

(*c*) a copy of any document in his charge.

(2) The Municipal Commissioner shall comply with every such requisition without unreasonable delay.

Origin of section.—This is taken from sec. 66 of the Bom. City Act, and sec. 21 of the Calcutta Municipal Act, 1899.