

**CHAPTER XXVI.**  
**PROCEEDINGS BEFORE JUDGE, <sup>1</sup>[APPELLATE  
COURTS] & MAGISTRATES**

**Procedure in  
election inquiries**

**1. Election Inquiries.**

**403. Procedure in election inquiries.**

(1) If an application is made under section 16 for a declaration that any particular candidate shall be deemed to have been elected, the applicant shall make parties to his application all the candidates who were duly nominated for the seat or seats in the ward in question, whether or not the said candidates have been declared elected, and shall proceed against the candidate or candidates declared elected.

(2) The applicant shall, whenever so required by the Judge, desposit in the Court a sum of five hundred rupees in cash or Government securities of equivalent value at the market rate of the day as security for any costs which the applicant may be ordered to pay to other panics to the said application.

(3) If, after making such inquiry as he deems necessary, the Judge finds that the election of a returned candidate has been procured or induced or the result of the election has been materially affected by any corrupt practice, or any corrupt practice has been committed in the interests of a returned candidate or the result of the election has been materially affected by the improper acceptance or rejection of any nomination or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote or by the reception of a vote which is void, or by any non-compliance with the provisions of this Act or any rules made thereunder relating to the election, or by any mistake in the use of any prescribed form. or the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed, he shall declare the election of the returned candidate to be void and if he does not so find he shall confirm the election of the returned candidate.

(4) All applications received under section 16-

(a) in which the validity of the election of councillors elected to represent the same ward is in question shall be heard by the same Judge, and

(b) in which the validity of the election of the same councillor elected to represent the same ward is in question shall be heard together.

<sup>2</sup>[(5) (a) In an enquiry under sub-section (3) into an application made under section 16 for a declaration that a particular candidate shall be deemed to have been elected, the returned candidate or any other party thereto may give evidence to prove that the election of the person in whose favour such declaration is sought would have been void, if such person had been declared elected and an application had been presented calling in question his election ;

<sup>1</sup> These words were substituted for the words "District Judge" by Guj. 8 of 1968, s. 8 (1)

<sup>2</sup> Sub-section (5) was substituted for the original by Guj. 13 of 1961. s. 2.

- (b) if after holding such enquiry the Judge is of opinion-
- (i) that the candidate in whose favour the declaration is sought has received a majority of the valid votes, or
  - (ii) that but for the votes obtained by the returned candidate by corrupt practices, such candidate would have obtained a majority of the valid votes, the judge shall, in addition to declaring the election of the returned candidate to be void, declare the candidate, in whose favour the declaration is sought, to have been duly elected.]
- (6) The Judge's order under this section shall be conclusive.
- (7) Every election not called in question in accordance with the foregoing provisions shall be deemed to have been to all intents a good and valid election.

**Disqualification for election as councillor for certain election offences**

**404. Disqualification for election as councillor for certain election offences.**

- (1) If the Judge sets aside an election of a candidate on the ground that a corrupt practice has been committed in the interest of such candidate, he shall declare such candidate to be disqualified for the purpose of any fresh election which may be held under this Act.
- (2) If in any proceedings under section 16, the Judge finds that a corrupt practice has been committed within the meaning of that section by any person he may, if he thinks fit, declare such person to be disqualified for being elected and for being a councillor for such term of years not exceeding seven as he may fix :  
Provided that no such declaration shall be made unless such person has been given a reasonable opportunity to be heard :  
Provided further that the <sup>3</sup>[State] Government may by order in writing at any time relieve such person from such disqualification but subject only to such order, the declaration by the Judge shall be conclusive.

**References to the Judge**

**II. References to the Judge.**

**405. References to the Judge.**

- In the following cases a reference shall be made to the Judge:-
- (1) whether a councillor has ceased to hold office under section 12 ;
  - (2) whether a person has ceased to be a member of the Transport Committee under section 26;
  - (3) whether the Commissioner may be directed to remove a shaft or pipe on the application of the owner of a building or hut under section 175 ;
  - (4) regarding the amount of the price for the land required for setting forward a building under section 216 ;
  - (5) regarding the amount or payment of expenses for any work executed or any measure taken or things done under the orders of the Commissioner or any municipal officer under section 439 ;
  - (6) regarding the amount or payment of expenses or compensation and the apportionment thereof falling under any of the provisions of this Act or any rule or by-law thereunder not otherwise specifically provided for.

<sup>3</sup> This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

### III. Appeals against Valuation and Taxes.

Appeals when and to whom to lie

#### 406. Appeals when and to whom to lie.

(1) Subject to the provisions hereinafter contained, appeals against any rateable value or tax fixed or charged under this Act shall be heard and determined by the Judge.

(2) No such appeal <sup>4</sup>[shall be entertained] unless-

(a) it is brought within 15 days after the actual of the cause of complaint ;

(b) in the cause of an appeal against a rateable value a complaint has previously been made to the Commissioner as provided under this Act and such complaint has been disposed of ;

(c) in the case of an appeal against any tax in respect of which provision exists under this Act for a complaint to be made to the Commissioner against the demand, such complaint has previously been made and disposed of;

(d) in case of an appeal against any amendment made in the assessment book for property taxes during the official year, a complaint has been made by the person aggrieved 15 days after he first received notice of such amendment and his complaint has been disposed of ;

(e) in the case of an appeal against a tax, or in the case of an appeal made against a <sup>5</sup>[rateable value, the amount of the disputed tax claimed from the appellant, or the amount of the tax chargeable on the basis of the disputed rateable value, up to the date of filing the appeal, has been deposited by the appellant with the Commissioner] :

<sup>6</sup> <sup>7</sup>[Provided that where in any particular case the judge is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him, to judge may in his discretion, either unconditionally or subject to such conditions as he may think fit to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed twenty Five per cent of the amount deposited or required to be deposited.] ]

#### 407. Cause of complaint when to be deemed to have secured.

Cause of complaint when to be deemed to have secured

For the purposes of section 406, cause of complaint shall be deemed to have accrued as follows, namely :-

(a) in the case of an appeal against a rateable value, on the day when the complaint made to the Commissioner against such value is disposed of;

(b) in the case of an appeal against any tax referred to in a clause (c) of sub section (2) of the said section on the day when the complaint against the tax is disposed of by the Commissioner ;

(c) in the case of an appeal against any amendment made in the assessment book for property taxes during the official year, on the day when the complaint made to the Commissioner by the person aggrieved against such amendment is disposed of ;

(d) in case of an appeal against tax of not covered by clause (b) above on the day when payment thereof is demanded or when a bill therefore is served.

<sup>4</sup> These words were substituted for the words "shall be heard" by Guj. 5 of 1970, s. 10 (1).

<sup>5</sup> This portion, was substituted for the portion beginning with the words "rateable value after a bill" and ending with the words "with the Commissioner" by Guj. 1 of 1979, s.21 (a).

<sup>6</sup> This proviso was added by Guj. 5 of 1970, s. 10 (2).

<sup>7</sup> This proviso was substituted by Guj. 1 of 1979. s. 21 (b).

<b>Arbitration</b>	<p><sup>8</sup><b>[408. Arbitration.</b></p> <p>(1) Where any person aggrieved by an order fixing or charging any rateable value or tax under this Act desires that any matter in difference between him and the other parties interested in such order should be referred to arbitration, then, if all such parties agree to do so, they may, at any time within fifteen days after the accrual of the cause of complaint, apply to the Judge for an order of reference on such matter and on such application being made, the provisions of the Arbitration Act, 1940[X of 1940] relating to arbitration in suits shall, so far as they can be made applicable apply to such application and the proceedings to follow thereon, as if the said Judge were a Court within the meaning of that Act and the application were an application made in a suit.</p> <p>(2) An application for an order of reference to arbitration as aforesaid may also be made during the pendency of any appeal under section 406, at any time before a decision is given in such appeal and thereupon the provisions of sub-section (1) shall apply as if such application were an application under sub-section (1).]</p> <p><b>409. Appointment of expert valuer.</b></p>
<b>Appointment of expert valuer</b>	<p>(1) If any party to an appeal against a rateable value makes an application to the Judge either before the hearing of the appeal or at any time during the hearing of the appeal, but before evidence as to value has been adduced to direct a valuation of any premises in relation to which the appeal is made, the Judge may, in his discretion, appoint a competent person to make the valuation and any person so appointed shall have power to enter on, survey and value the premises in respect of which the direction is given ;</p> <p>Provided that, except when the application is made by the Commissioner, no such direction shall be made by the Judge unless the applicant gives such security as the Judge thinks proper for the payment of the costs of valuation under this sub-section.</p> <p>(2) The costs incurred for valuation under sub-section (1) shall be costs in the appeal, but shall be payable in the first instance by the applicant.</p> <p>(3) The Judge may, and on the application of any party to the appeal shall, call as a witness the person appointed under sub-section (1) for making the valuation and, when he is so called, any party to the appeal shall be entitled to cross-examine him.</p>
<b>Reference to [Civil Appellate Court]</b>	<p><b>410. Reference to <sup>9</sup>[Civil Appellate Court].</b></p> <p>If, before or on the hearing of an appeal relating to the rateable value or tax, any question of law or usage having the force of law, or the construction of a document arises, the Judge may, and on the application of any party to the appeal shall, draw up a statement of the facts of the case and the question so arising, and refer the statement with his own opinion on the point for the decision of the <sup>10</sup>[Civil Appellate Court].</p>

<sup>8</sup> Section 408 was substituted by Guj. 1 of 1979, s. 22.

<sup>9</sup> These words were substituted for the words "District Court" by Guj. 8 of 1968, s. 8(2).

<sup>10</sup> Same as 9.

- Appeals to the [Civil Appellate Court].**  
**411. Appeals to the <sup>11</sup>[Civil Appellate Court].**  
 An appeal shall lie to the <sup>12</sup>[Civil Appellate Court]-  
<sup>13</sup>[(aa) from a decision of the Judge in an appeal under section 391 against an assessment of compensation under clause (f) of sub-section (1) of section 389, and]  
 (a) from any decision of the Judge in an appeal under section 406 by which a rateable value in excess of two thousand rupees is fixed, and  
<sup>14</sup>[(bb) from any order of the Judge under the provisio to sub-section (2) of section 406; and],  
 (b) from any other decision of the said Judge in an appeal under the said section, upon a question of law or usage having the force of law or the construction of a document;  
 Provided that no such appeal shall be heard by the <sup>15</sup>[Civil Appellate Court] unless it is filed within one month from the date of the decision of the Judge.
- Costs of proceedings in appeal**  
**412. Costs of proceedings in appeal.**  
 The costs of all proceedings in appeal under section 406 before the Judge including those of arbitration under section 408 and of valuation under section 409 shall be payable by such parties in such proportion as the Judge shall direct and the amount thereof shall, if necessary, be recoverable as if the same were due under a decree of a Court of Small Causes under <sup>16</sup>[the relevant Small Cause Courts Act].
- Unappealed values & taxes & decisions on appeal to be final**  
**413. Unappealed values & taxes & decisions on appeal to be final.**  
 (1) Every rateable value Fixed under this Act against which no complaint is made as hereinbefore provided, and the amount of every sum claimed from any person under this Act on account of any tax, if no appeal therefrom is made as hereinbefore provided, and the decision of the Judge aforesaid upon any appeal against any such value or tax if no appeal is made therefrom under section 411 and if such appeal is made the decision of the <sup>17</sup>[Civil Appellate Court] in such appeal shall be final.  
 (2) Effect shall be given by the Commissioner to every decision of the said Judge on any appeal against any such value or tax.
- IV. Appeals to the Judge and the [Civil Appellate Court].**  
**414. Appeals to the Judge.**  
 Appeal shall lie to the Judge against the orders of the Commissioner in the following cases, namely :-  
 (1) an order declining to remove a shaft or pipe-under section 175;  
 (2) an order requiring a building to be set forward-under section 215;  
 (3) an order requiring the owner or occupier to repair, protect or enclose a place found to be dangerous-under section 247;  
 (4) an order directing the demolition of an insanitary building-under section 300;
- Appeals to the Judge**

<sup>11</sup> These words were substituted for the words "District Court" by Guj. 8 of 1968, s. 8(2).

<sup>12</sup> Same as 11.

<sup>13</sup> Clause (aa) was inserted by Guj. 19 of 1964, s. 20.]

<sup>14</sup> Clause (bb) was inserted by Guj. 5 of 1970, s. 11.

<sup>15</sup> Same as 11.

<sup>16</sup> These words were substituted for the words and figures "the Provincial Small Cause Courts Act. 1887" by Guj. 8 of 1968. s. 8 (4).

<sup>17</sup> Same as 11.

**Appeals against  
demolition orders**

(5) an order directing the demolition of an obstructive building-under section 303:

Provided that no such appeal shall lie unless it is filed within one month from the date of the order of the Commissioner.

**415. Appeals against demolition orders.**

(1) On an appeal being made against a demolition order made under section 300 or 303, the Judge may make such order either confirming or quashing or varying the order as he thinks fit, and he may, if he thinks fit, accept from an appellant any such undertaking as might have been accepted by the Commissioner, and any undertaking so accepted by the Judge shall have the like effect as if it had been given to and accepted by the Commissioner under section 300 :

Provided that the Judge shall not accept from an appellant upon whom such a notice as in mentioned sub-section (1) of section 300 was served an undertaking to carry out any work unless the appellant complied with the requirements of sub- section (2) of that section.

(2) An appeal shall lie to the <sup>18</sup>[Civil Appellate Court] from a decision of the Judge on an appeal under this section, within one month of such decision, when the rateable value entered in the Commissioner's assessment book in accordance with the provisions of this Act, of the premises to which the demolition order appealed against wholly or partially relates, exceeds two thousand rupees.

(3) A decision passed by the Judge under this section, if an appeal does not lie therefrom under sub-section (2) or if no appeal is filed, and, if an appeal is filed the decision of the <sup>19</sup>[Civil Appellate Court] in appeal shall, be final.

(4) Any order against which an appeal might be brought under this section shall, if no such appeal is brought, become operative on the expiration of the period of twenty-one days mentioned in section 306, and shall be final and conclusive as to any matters which could have been raised on such appeal, and any such order against which an appeal is brought shall, if and so far as it is confirmed by the Judge or the <sup>20</sup>[Civil Appellate Court], become operative as from the date of the final determination of the appeal.

(3) For the purposes of this section, the withdrawal of an appeal shall be deemed to be the final determination thereof, having the like effect as a decision confirming the order appealed against and, subject as aforesaid, an appeal shall be deemed to be finally determined on the date when the decision of the <sup>21</sup>[Civil Appellate Court] is given or in a case where no appeal is brought to the <sup>22</sup>[Civil Appellate Court] upon the expiration of the period within which such an appeal might have been brought, or in a case where no appeal lies to the <sup>23</sup>[Civil Appellate Court], on the date when the decision of the Judge is given

<sup>18</sup> These words were substituted for the words "District Court" by Guj. 8 of 1968, s. 8(2).

<sup>19</sup> Same as 18.

<sup>20</sup> Same as 18.

<sup>21</sup> Same as 18.

<sup>22</sup> Same as 18.

<sup>23</sup> Same as 18.

**Appeals against decision of the Judge regarding payment of expenses for works executed**

**416. Appeals against decision of the Judge regarding payment of expenses for works executed.**

(1) An appeal shall lie to the <sup>24</sup>[Civil Appellate Court] from a decision of the Judge regarding the amount or payment of expenses for any work executed, when the amount of the claim in respect of which the decision is given exceeds two thousand rupees:

Provided that no such appeal shall be heard by the <sup>25</sup>[Civil Appellate Court] unless it is filed within one month from the date of the decision of the Judge.

(2) The decision of the Judge regarding the amount or payment of expenses for any work executed, if no appeal is filed under this section, and, if an appeal is filed, the decision of the <sup>26</sup>[Civil Appellate Court] in such appeal shall be final.

(3) When an appeal is filed under sub-section (1) in respect of a decision regarding the amount or payment of expenses for any work executed, the Commissioner shall defer proceedings for the recovery of the amount determined under the said section to be due pending the decision of the <sup>27</sup>[Civil Appellate Court] and, after the decision, shall proceed to recover only such amount, if any, as shall be thereby determined to be due.

**<sup>28</sup>[416A. Fees in appeals before <sup>29</sup>[Civil Appellate Court].**

**416A. Fees in appeals before [Civil Appellate Court**

The State Government may from time to time, by notification in the Official Gazette, prescribe what fee, if any, shall be paid for an appeal to the <sup>30</sup>[Civil Appellate Court] under section 411, 415 or 416 :

Provided that the <sup>31</sup>[Civil Appellate Court] may, whenever it thinks fit, receive an appeal by or on behalf of a poor person, without payment or on a part payment of the prescribed fees :

Provided further that whenever an appeal made to the <sup>32</sup>[Civil Appellate Court] is settled by agreement of the parties before the hearing, half the amount of the fees paid up shall be repaid by the <sup>33</sup>[Civil Appellate Court] to the party by whom the same may have been paid.]

**V. Proceedings before Judge.**

**Remedy of owner of building or land against occupier who prevents his complying with any provisions of this Act]**

**417. Remedy of owner of building or land against occupier who prevents his complying with any provisions of this Act.**

(1) if the owner of any building or land is prevented by the occupier thereof from complying with any provision of this Act or of any rule, regulation or by-law or with any requisition made under this Act or under any such rule, regulation or by-law in respect of such building or land, the owner may apply to the Judge.

(2) The Judge, on receipt of any such application, may make a written

<sup>24</sup> These words were substituted for the words "District Court" by Guj. 8 of 1968, s. 8(2).

<sup>25</sup> Same as 24.

<sup>26</sup> Same as 24.

<sup>27</sup> Same as 24.

<sup>28</sup> This section was inserted by Bom. 45 of 1954, s. 2.

<sup>29</sup> Same as 24.

<sup>30</sup> Same as 24.

<sup>31</sup> Same as 24.

<sup>32</sup> Same as 24.

<sup>33</sup> Same as 24.

order requiring the occupier of the building or land to afford all reasonable facilities to the owner for complying with the said provision or requisition, or to vacate the premises temporarily if the said provision or requisition relates to any action under section 264. involving the safety or convenience of such occupier, and may also, if he thinks fit. direct that the cost of such application and order be paid by the occupier.

(3) After eight days from the date of such order, it shall be incumbent on the said occupier to afford all such reasonable facilities to the owner for the purpose aforesaid or to vacate the premises temporarily as shall be prescribed in the said order, and in the event of his continued refusal so to do, the owner shall be discharged, during the continuance of such refusal, from any liability which he would otherwise incur by reason of his failure to comply with the said provision or requisition.

(4) Nothing in this section shall affect the powers of the Commissioner under any provision of this Act to cause any premises to be vacated.

**Power to summon witnesses and compel production of documents**

**418. Power to summon witnesses and compel production of documents.**

(1) For the purposes of any inquiry or proceeding under this Act, the Judge may summon and enforce the attendance of witnesses and compel them to give evidence and compel the production of documents, by the same means and, as far as is possible, in the same manner as is provided in the case of a Court of Small Causes by or under <sup>34</sup>[the relevant Small Cause Courts Act] and in all matters relating to any such inquiry or proceeding the Judge shall be guided generally by the provisions of the said Act so far as the same are applicable.

(1) If, in any such inquiry or proceeding, the person against whom the complaint or application has been made fails to appear, notwithstanding that he has been duly summoned for this purpose, the Judge may hear and determine the case in his absence.

(3) The costs of every such inquiry or proceeding as determined by the Judge, shall be payable by such parties and in such proportions as the Judge shall direct and the amount thereof shall, if necessary, be recoverable as if the same were due under a decree of a Court of Small Causes constituted under <sup>35</sup>[the relevant Small Cause Courts Act]: Provided that, if such inquiry or proceeding relates to a dispute regarding expenses declared to be improvement expenses by or under any provision of this Act, the amount of the costs directed by the Judge to be paid by the owner or occupier of the premises in respect of which or for the benefit of which the improvement expenses were incurred shall be a charge on such premises and may also be recovered in the manner prescribed in section 442.

<sup>34</sup> These words were substituted for the words and figures "the Provincial Small Cause Courts Act. 1887" by Guj. 8 of 1968, s. 8 (4).

<sup>35</sup> Same as 34.

<b>Fees in proceeding before the Judge</b>	<p><b>419. Fees in proceeding before the Judge.</b></p> <p>(1) The <sup>36</sup>[State] Government may, from time to time, by notification in the Official Gazette, prescribe what fee, if any, shall be paid :-</p> <p>(a) on any application, appeal or reference made under this Act to the Judge; and</p> <p>(b) previous to the issue, in any inquiry or preceding of the Judge under this Act. of any summons or other process :</p> <p>Provided that the fees, if any, prescribed under clause (a) shall not, in cases in which the value of the claim or subject matter is capable of being estimated in money, exceed the fees for the time being levied, under the provisions of <sup>37</sup>[the relevant Small Cause Courts Act], in cases in which the value of the claim or subject matter is of like amount.</p> <p>(2) The <sup>38</sup>[State] Government may from time to time by a like notification determine by what person any fee prescribed under clause (a) of sub-section (1) shall be payable.</p> <p>(3) No application, appeal or reference shall be received by the Judge, until the fee, if any, prescribed therefor under clause (a) of sub-section (1) has been paid.</p>
<b>Exemption of poor persons from fees</b>	<p><b>420. Exemption of poor persons from fees.</b></p> <p>The Judge may, whenever, he thinks fit, receive an application, appeal or reference made under this Act, by or on behalf of a poor person, and may issue process on behalf of any such person without payment or on a part payment of the fees prescribed under section 419.</p>
<b>Repayment of half fees on settlement before hearing</b>	<p><b>421. Repayment of half fees on settlement before hearing.</b></p> <p>Whenever any application, appeal or reference made to the Judge under this Act is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Judge to the parties by whom the same have been respectively paid.</p>
<b>Appointment of a Magistrate of the First Class</b>	<p style="text-align: center;"><b>VI. Appointment of Magistrates.</b></p> <p><b>422. Appointment of a Magistrate of the First Class.</b></p> <p>(1) The <sup>39</sup>[State] Government may with the consent of the Corporation create one or more posts of Magistrates of the First Class for the trial of offences against this Act, or against any rule, regulation or by-law made thereunder and may appoint any person to such post and may also appoint such ministerial officers for the court of any such Magistrate as it may think necessary :</p> <p>Provided that notwithstanding the appointment of one or more Magistrates of the First Class under this section it shall be open to the District Magistrate subject to the rules for the time being in force under section 17 of the Code of Criminal Procedure, 1898, regulating the distribution of business in the Courts of Magistrates of the First Class to make such distribution of the work of trial of such offences and of all other work before the Courts of the Magistrates (including any appointed under this section) as may appear to him most</p>

<sup>36</sup> This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

<sup>37</sup> These words were substituted for the words and figures "the Provincial Small Cause Courts Act. 1887" by Guj. 8 of 1968, s. 8 (4)

<sup>38</sup> Same as 36.

<sup>39</sup> Same as 36.

conducive to efficiency.

(2) Such Magistrate or Magistrates and their establishments shall be paid such salary, pension, leave allowances and other allowances as may, from time to time, be fixed by the <sup>40</sup>[State] Government.

(3) The amounts of the salary and other allowances as fixed under sub-section (2), together with all other incidental charges shall be reimbursed to the <sup>41</sup>[State] Government by the Corporation, who shall also pay to the <sup>42</sup>[State] Government such contribution towards the pension, leave and other allowances of such Magistrate or Magistrates and their establishment as may from time to time be fixed by the <sup>43</sup>[State] Government:

Provided that the <sup>44</sup>[State] Government may, with the concurrence of the Corporation, direct that in lieu of the amounts payable under this section the Corporation shall pay to the <sup>45</sup>[State] Government annually, on such date as may be fixed by the <sup>46</sup>[State] Government in this behalf, such fixed sum as may be determined by the <sup>47</sup>[State] Government in this behalf.

### VII. References to Magistrates.

#### References to Magistrates

#### 423. References to Magistrates.

In the following matters references shall be made to a Magistrate of the first

Class having jurisdiction within the limits of the City :-

- (a) the abatement of overcrowding- under section 307;
- (b) the detention of a person suffering from a dangerous disease in a public hospital under the rules.

#### Disposal of animals and articles of non-perishable nature seized under section 338

#### 424. Disposal of animals and articles of non-perishable nature seized under section 338.

(1) Any animal and any article not of a perishable nature and any utensil or vessel seized under section 338 shall be forthwith taken before a Magistrate of the First Class.

(2) If it shall appear to such Magistrate that any such animal or article is diseased, unsound or unwholesome or unfit for human consumption, as the case may be. or is not what it was represented to be or that such utensil or vessel is of such kind or in such state as to render any article prepared, manufactured or contained therein unwholesome or unfit for human consumption, he may, and if it is diseased, unsound, unwholesome or unfit for human consumption, he shall cause the same to be destroyed, at the charge of the person in whose possession it was at the time of its seizure, in such manner as to prevent the same being again exposed or hawked about for sale or used for human consumption or for the preparation or manufacture of, or for containing any such article as aforesaid.

<sup>40</sup> This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

<sup>41</sup> Same as 40.

<sup>42</sup> Same as 40.

<sup>43</sup> Same as 40.

<sup>44</sup> Same as 40.

<sup>45</sup> Same as 40.

<sup>46</sup> Same as 40.

<sup>47</sup> Same as 40.

<b>Penalty for possessing food which appears to be diseased, unsound or unwholesome or unfit for human food</b>	<p><b>425. Penalty for possessing food which appears to be diseased, unsound or unwholesome or unfit for human food.</b> In every case in which food, on being dealt with under section 424, appears to the Magistrate to be diseased, unsound or unwholesome or unfit for human consumption, the owner thereof or the person in whose possession it was found, not being merely bailee or carrier, thereof, shall, on conviction, if in such case the provisions of section 273 of the Indian Penal Code do not apply, be punished with fine which may extend to five hundred rupees.</p>
<b>Application for summon to be refused if not applied for within a reasonable time</b>	<p><b>426. Application for summon to be refused if not applied for within a reasonable time.</b> In all prosecutions under section 425 the Magistrate shall refuse to issue a summons for the attendance of any person accused of an offence against such section, unless the summons is applied for within a reasonable time from the alleged date of the offence of which such person is accused.</p>
<b>Cognizance of offences</b>	<p style="text-align: center;"><b>VIII. Proceedings before Magistrate and the <sup>48</sup>[Criminal Appellate Court]</b></p> <p><b>427. Cognizance of offences.</b> (1) Offences for the contravention of sections 60, 61 and 325 shall be cognizable. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, [V of 1898] all offences against this Act, or against any rule, regulation or by-law, whether committed within or without the City, shall be cognizable by a Magistrate of the First Class having jurisdiction in the City and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence or of any offence against any enactment hereby repealed, by reason only of his being liable to pay any municipal tax or of his being benefited by the Municipal Fund. (3) Notwithstanding anything contained in section 200 of the said Code, it shall not be necessary in respect of any offence against this Act, or any rule, regulation or by-law made thereunder, to examine the complainant when the complaint is presented in writing.</p>
<b>Limitation of time within which complaints of offence punishable under this Act shall be entertained</b>	<p><b>428. Limitation of time within which complaints of offence punishable under this Act shall be entertained.</b> No Magistrate shall take cognizance of any offence punishable under this Act, or any rule, regulation or by-law, unless complaint of such offence is made before him-</p> <p>(a) within six months next after the date of the commission of such offence; or (b) if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence.</p>
<b>Power of Magistrate to hear cases in absence of accused</b>	<p><b>429. Power of Magistrate to hear cases in absence of accused.</b> If any person summoned to appear before a Magistrate to answer a charge of an offence punishable under this Act or any rule, regulation or by-law fails to appear at the time and place mentioned in the</p>

<sup>48</sup> These words were substituted for the words "Sessions Court" by Guj. 8 of 1968, s. 8 (3).

summons, and if service of summons is proved to the satisfaction of the Magistrate and no sufficient cause is shown for the non-appearance of such person the Magistrate may hear and determine the case in his absence.

**Report of Chemical  
Analyser to  
Government**

**430. Report of Chemical Analyser to Government.**

Any document purporting to be a report under the hand of the Chemical Analyser to Government upon any article duly submitted to him for analysis may be used as evidence of the facts therein stated in any inquiry or prosecution under this Act.

**Complaint  
concerning  
nuisances**

**431. Complaint concerning nuisances.**

(1) Any person who resides in the City may complaint to a Magistrate of the First Class having jurisdiction therein of the existence of any nuisance or that in the exercise of any power conferred by section 156, 157, 175, 176, 177, 249 or 292 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 of any rule, regulation or by-law 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.

(3) Subject to the provisions of section 432 it shall be incumbent on the Commissioner to obey every such order.

(4) Nothing in this Act contained shall interfere with the right of any person who may suffer injury or whose property may be injuriously affected by any act done in the exercise of any power conferred by section 156, 157, 175, 176, 177, 249 or 292 to recover damages for the same.

**Appeal to the  
[Criminal Appellate  
Court] from order  
passed under  
section 431**

**432. Appeal to the <sup>49</sup>[Criminal Appellate Court] from order passed under section 431.**

(1) An appeal shall lie to the <sup>50</sup>[Criminal Appellate Court] from an order passed by a Magistrate under section 431 within one month of the date thereof.

(2) the <sup>51</sup>[Criminal Appellate Court] may, when disposing of an appeal under sub-section (1), direct by whom and in what proportions, if any, the costs of the appeal are to be paid, and costs so directed to be paid may, on application to a Magistrate of the First Class having jurisdiction in the City, be recovered by him, in accordance with the direction of the <sup>52</sup>[Criminal Appellate Court], as if they were a fine imposed by himself.

<sup>49</sup> These words were substituted for the words "Sessions Court" by Guj. 8 of 1968, s. 8 (3).

<sup>50</sup> Same as 49.

<sup>51</sup> Same as 49.

<sup>52</sup> Same as 49.

(3) When an appeal has been preferred to the <sup>53</sup>[Criminal Appellate Court] under this section the Commissioner shall defer action upon the order of the Magistrate until such appeal has been disposed of and shall thereupon forthwith give effect to the order passed in such appeal by the <sup>54</sup>[Criminal Appellate Court] or, if the order of the Magistrate has not been disturbed by the <sup>55</sup>[Criminal Appellate Court], then to his order.

(4) The <sup>56</sup>[Criminal Appellate Court] may, from time to time, make rules for regulating the admission of appeals under sub-section (1) and the procedure to be followed in the adjudication thereof.

#### **IX. Arrest of Offenders.**

**Offenders against this Act may in certain cases be arrested by police officers**

#### **433. Offenders against this Act may in certain cases be arrested by police officers.**

(1) Any police officer may arrest any person who commits in his view any offence against this Act or against any rule, regulation' or by-law, if the name and address of such person be unknown to him, and if such person, on demand declines to give his name and address or gives a name and address which such officer has reason to believe to be false.

<sup>57</sup>(2) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of the <sup>58</sup>[nearest Judicial Magistrate], for a longer period than twenty-four hours from the time of arrest exclusive of the time necessary for the journey from the place of arrest to the court of such Magistrate.]

#### **X. Miscellaneous.**

**Code of Civil Procedure to apply**

#### **434. Code of Civil Procedure to apply.**

(1) Save as expressly provided by this Chapter the provisions of the Code of Civil Procedure, 1908, [V of 1908] relating to appeals from original decrees shall apply to appeals to the Judge from the orders of the Commissioner and relating to appeals from appellate decrees shall apply to appeals to the <sup>59</sup>[Civil Appellate Court].

(2) All other matters for which no specific provision has been made under this Act shall be governed by such rules as the <sup>60</sup>[State] Government may from time to time make after consultation with the High Court.

**Limitation.**

#### **435. Limitation.**

(1) In computing the period of limitation prescribed for an appeal or application referred to in this Chapter, the provisions of sections 5, 12, and 14 of the Indian Limitation Act, 1908, [IX of 1908] shall, so far as may be apply.

(2) When no time is prescribed by this Act for the presentation of .an appeal, application or reference, such appeal or application shall be

<sup>53</sup> These words were substituted for the words "Sessions Court" by Guj. 8 of 1968, s. 8 (3).

<sup>54</sup> Same as 53.

<sup>55</sup> Same as 53.

<sup>56</sup> Same as 53.

<sup>57</sup> Sub-section (2) was substituted for the original by the Adaptation of Laws Order, 1950.

<sup>58</sup> These words were substituted for the words "nearest Magistrate" by Bom. 8 of 1954, s.2, Sch., Part III.

<sup>59</sup> These words were substituted for the words "District Court" by Guj. 8 of 1968, s. 8 (2)

<sup>60</sup> This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

presented or reference shall be made within thirty days from the date of the order in respect of or against which the appeal, application or reference is presented or made.

**Execution of orders of the Judge & Civil [Appellate Courts].**

**436. Execution of orders of the Judge & Civil <sup>61</sup>[Appellate Courts].**

(1) All orders of the Judge shall be executed in the same manner as if they were decrees of the Court of Small Causes passed under <sup>62</sup>[the relevant Small Cause Courts Act].

(2) All orders of the <sup>63</sup>[Civil Appellate Courts] shall be executed as if they were the decrees of the <sup>64</sup>[Civil Appellate Court].

**Rules of construction in respect of Magistrate for city of Ahmedabad**

**<sup>65</sup>[436A. Rules of construction in respect of Magistrate for city of Ahmedabad**

The references in this Act to a Magistrate of the First Class or Magistrate shall in relation to the City of Ahmedabad be constructed as references to a Magistrate appointed under section 14 of the Ahmedabad City Courts Act, 1961.] [Guj. XIX of 1961.]

**Criminal Procedure Code to apply to all inquiries and proceedings before Magistrates**

**437. Criminal Procedure Code to apply to all inquiries and proceedings before Magistrates.**

The provisions of the Code of Criminal Procedure, 1898, [V of 1898] shall, so far as may be, apply to all inquiries and proceedings under this Act before the Magistrates.

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<sup>61</sup> These words were substituted for the words "District Judge" by Guj. 8 of 1908, s. 8 (1).

<sup>62</sup> These words were substituted for the words and figures "the Provincial Small Cause Courts Act, 1887", *ibid.*, s. 8 (4).

<sup>63</sup> Same as 61.

<sup>64</sup> Same as 61.

<sup>65</sup> Section 436A was inserted, *ibid.* s. 10.