CHAPTER XIII.

MUNICIPAL COURTS.

Municipal Courts in England and at Common Law.

§ 424 (356). **At Common Law.** — A municipal corporation *may, at common law, enjoy the franchise of holding a court;* and corporation or municipal courts, which were local or inferior tribunals, were not uncommon.[1] They were treated as the tribunals of the corporation; but since courts of justice are for the public benefit, words in a charter permitting the corporation to hold a court are imperative.[2] Such public right cannot be lost by a non-user; and therefore the mere disuse, for two hundred years, of a court granted to a corporation by charter is no answer to a rule for a *mandamus* commanding them to hold it, though it was alleged that there were no sufficient funds for the purpose.[3]

§ 425. **Jurisdiction; Parties; Jurors.** — The *common-law doctrine respecting municipal courts* was settled to be that the municipal corporation could bring no action therein against a stranger where the effect would be to benefit the corporation or increase its funds, for that would be to make the corporation itself both judge and party, which an inflexible and fundamental maxim of the common law prohibited; and the same principle was considered to operate to disqualify corporators to sit as jurors in such cases; but this objection did not apply when both parties were corporators.[4]

§ 426. **Existing Borough Courts.** — The English Municipal Corporation Act of 1835 provides *for the establishment of borough courts,*

[1] Inst. 114; 4 Inst. 78, 224; Cro. Jac. 313; Haddock's Case, Sir Thomas Raymond, 435.

[2] Rex *v.* Mayor, &c. of Hastings, 5 B. & Ald. 692, n. The language of the charter was "that the mayor *may* for the purpose hereafter have and hold and have power to hold a court of record," and it was held that these words, though permissive in form, were imperative, and that the corporation was bound to hold the court for the benefit of the inhabitants. *Ib.;* Grant on Corp. 34.

[3] Rex *v.* Mayor, &c. of Wells, 4 Dowl. P. C. 562.

[4] Hesketh *v.* Braddock, 3 Burr. 1856–1868; cited *infra*, sec. 431, note; Grant on Corp. 194; London *v.* Wood, 12 Mod. 674; 1 Salk. 398; Bosworth *v.* Budgen, 7 Mod. 461; Reg. *v.* Rogers, 2 Ld. Raym. 778; Willc. on Corp. 157, 165. See *infra*, sec. 431.

defines their jurisdiction and powers, makes burgesses or citizens competent jurors, contains an express provision that no witness or magistrate shall be incompetent or disqualified by reason of his being liable to contribute to the fund of the corporation, and regulates in general the proceedings therein for violation of by-laws or ordinances, and the collection and enforcement of penalties.[1]

It may, however, be observed that under the act the power to make by-laws is limited, and does not extend to acts criminal in their nature, and which are punishable by criminal statutes in force throughout the realm.

American Corporation Courts; Constitutional Provisions.

§ 426 *a*. **Introductory Observations.** — Here, as elsewhere, *the composite type of the usual American municipality* in its local and private, as well as its general and public character, distinctly reveals itself. Although often material it is not always easy to trace the line of demarcation. To ascertain and define it as applicable to this chapter we have to resort to the construction which well-known provisions of *Magna Charta* relating to personal rights and liberty have received in Great Britain and here, and to the legislative enactments and polity in both countries, and in this country to special constitutional provisions relating thereto, and to the powers and jurisdiction of the judicial tribunals. The subject is obviously important. Statutory provisions concerning the constitution and powers of the municipal government and those of the local tribunals, especially provisions authorizing summary proceedings in municipal courts without trial by jury and without the usual formulae of an adversary proceeding in the superior judicial tribunals, have frequently been found to be in conflict with organic provisions to secure fundamental rights of property and the liberty of the citizen. Summary powers, properly defined and limited, are essential to the well-being of local communities, and when thus limited and defined are perfectly consistent with the liberty of the citizen, that is, liberty regulated by law, which is the only true liberty. These limits must be sought largely in the polity, practice and traditions, and in the judicial judgments in England and in this country relating thereto, in

[1] 5 and 6 Wm. IV. chap. lxxxvi, secs. 90, 91, 118–134, 270–341 (1835). Mr. Justice *Stephen* traces the history of Borough Courts prior to the act of 1835, and states the changes made by that act. Hist. Criminal Law, vol. i. chap. iv. p. 116 *et seq.* He also summarizes the legislation authorizing the infliction of summary penalties of different kinds upon a great variety of offenders, ending in the Summary Jurisdiction Act of 1879 (42 & 43 Vict. chap. 49). *Ib.*, chap. iv. p. 122. *Post*, sec. 337 *et seq.*

the light of which constitutional provisions must be construed. Some pains have therefore been taken to exhibit in the text the material doctrines of our jurisprudence on these subjects, and in the notes to furnish the reader with the data for full research, critical consideration, and the formation of his own conclusions.

§ 427 (357). **Creation, Jurisdiction, and Powers.** — In this country it is usual to provide in the charter or organic act of a municipal corporation *for a local or special tribunal*, called by different names, such as the mayor's court, recorder's court, city court, and the like; and which is invested with jurisdiction over complaints and prosecutions for the violation of the ordinances of the corporation, and often, for public convenience, with special civil and limited criminal jurisdiction under the laws of the State. It is competent for the legislature to provide for the establishment of these inferior courts, and to invest them with such measure of power and jurisdiction as may be deemed expedient, if no provision of the Constitution of the particular State be infringed.[1] It may also abolish them.[2]

[1] State *v.* Mayor of Charleston, 12 Rich. (S. C.) Law, 480; State *v.* Helfrid, 2 Nott & McCord (S. C.), 233 (1820); *infra*, sec. 432, note; Callahan *v.* New York, 66 N. Y. 656; People *v.* Curley, 5 Col. 412.

Constitutional provisions concerning the establishment and powers, local, civil, and criminal, of Inferior Courts: The power conferred on police magistrate to issue process against the body of an offender is constitutional. Brown *v.* Jerome, 102 Ill. 371. The legislature has no power to confer upon local municipal courts a jurisdiction which is exclusive of that which, by the Constitution, is given to another court. Montross *v.* State, 61 Miss. 429. Full discussion of *legislative power to create inferior courts*, and define jurisdiction. Callahan *v.* New York, 66 N. Y. 656; Gray *v.* State, 2 Harring. (Del.) 76 (1835). Mayor's court an *inferior* court within meaning of State Constitution. *Ib.;* Egleston *v.* City Council, 1 Mill Const. (S. C.) 45. As to official character of city recorder. *Ib.;* Schroder *v.* City Council, 2 Const. R. 726; s. c. 3 Brev. 533; *post*, sec. 430; Tesh *v.* Commonwealth, 4 Dana (Ky.), 522; Nugent *v.* State, 18 Ala. 521 (1821), holding the city court of Mobile, which is invested with criminal jurisdiction, and from whose judgment an appeal lies, to be constitutional, and defining meaning of *inferior court*. Perkins *v.* Corbin, 45 Ala. 103 (1871), holding that a city court is an inferior court within the meaning of the Constitution, which may be created and abolished at the pleasure of the legislature, and that the abolition of the court carries with it the office of the Judge. New Orleans *v.* Costello, 14 La. An. 37; Myers *v.* People, 26 Ill. 173; Davis *v.* Woolnough, 9 Iowa, 104; People *v.* Wilson, 15 Ill. 389; State *v.* Maynard, 14 Ill. 419; Beesman *v.* Peoria, 16 Ill. 484; Holmes *v.* Fihlenburg, 54 Ill. 203 (1870); Van Swartow *v.* Commonwealth, 24 Pa. St. 131 (1854); Tierney *v.* Dodge, 9 Minn. 166; St. Peter *v.* Bauer, 19 Minn. 327 (1872); *infra*, sec. 432, note; Burns *v.* La Grange, 17 Texas, 415 (1856); Slattery, *In re*, 3 Ark. 484; *Ib.* 561; Graham *v.* State, 1 Pike (1 Ark.), 171; Floyd *v.* Eatonton Comm'rs, 14 Ga. 354 (1853); Hill *v.* Dalton, 72 Ga. 314; State *v.* Gutierrez, 15 La. An. 190; Muscatine *v.* Steck, 7 Iowa, 505; Richmond Mayoralty Case, 19 Gratt. (Va.) 673 (1870). The superior court of the city of San Francisco is constitutional. Seale *v.* Mitchell, 5 Cal. 403; Vassault *v.* Austin, 36 Cal. 691; Hickman *v.* O'Neal, 10 Cal. 294. The Constitution of *California* as amended in 1862 authorized the legislature to establish "recorder's or other inferior courts in any incorporated city or town;" and it was held, in view of the prior decisions in the State just cited, that the municipal criminal court of the city and county of San Francisco was an *inferior* court, and constitutional. People *v.* Nyland, 41 Cal. 129 (1871); Stratman, *In re*, 39 Cal. 517 (1870). An act "to provide for police courts in cities having 30,000 and under 100,000 inhabitants" sustained as against the constitutional objections that it was "a law of a general nature," and was "not uniform in its operation," and that its title was not sufficiently explicit and comprehensive. People *v.* Henshaw, 76 Cal. 436 (1888).

The Hustings Court of Richmond is constitutional. Chahoon's Case, 21 Gratt. (Va.) 822 (1871); Richmond Mayoralty Case, 19 Gratt. (Va.) 673 (1870). Judiciary article of State Constitution of New York as to the jurisdiction of certain city courts construed. Landers *v.* Staten Island Railroad Co., 53 N. Y. 450 (1873).

Under a *constitutional provision* declaring that "the *judicial power shall be vested* in a Supreme Court, in district courts, and in justices of the peace," an act conferring judicial powers on the mayor of a city was considered void, and it was held that for violations of its ordinances the corporation should resort to the judicial tribunals organized under the Constitution. Lafon *v.* Dufrocq, 9 La. An. 350 (1854). But see The State *v.* Young, 3 Kan. 445 (1866), where a provision in an organic act that the judicial power shall be vested exclusively in a Supreme Court, district, probate, and justice courts, was held not to prohibit the legislature from establishing municipal courts for the enforcement of municipal regulations and ordinances. And this seems to be the correct view. Shafer *v.* Mumma, 17 Md. 331. In Hutchings *v.* Scott, 4 Halst. (N. J.) 218 (1827), the objection was made that the legislature could not constitutionally confer the powers of *justices of the peace on the mayor, recorder, or aldermen of a city, or borough*, the argument being that since the Constitution provided for the appointment of justices of the peace only, and not for corporate officers, officers exercising the authority and powers of a justice of the peace should be appointed as such; but the objection was not sustained. In *Illinois*, mayors of cities cannot, it was held, be constitutionally invested with judicial power. The State, &c. *v.* Maynard, 14 Ill. 420; Beesman *v.* Peoria, 16 Ill. 484. By the general law of *Indiana* of 1857, for the incorporation of cities, mayors, in addition to their duties proper, have, "within the limits of cities, the jurisdiction and powers of a justice of the peace in all matters, civil and criminal, arising under the laws of the State, and for crimes and misdemeanors a jurisdiction co-extensive with the county." The Constitution of the same State (art. VII, sec. 16) declared that "no person elected to any *judicial office* shall, during the term, be eligible to any office of trust or profit under the State, other than a judicial office." One Wallace was elected mayor of Indianapolis, and within his term he resigned and received a majority of votes for sheriff of the county. It was held by the Supreme Court of *Indiana* (Waldo *v.* Wallace, 12 Ind. 569 (1859); Gulick *v.* New, 14 Ind. 93) that Wallace was a "judicial officer," and therefore ineligible to the office of sheriff; that the voters of the county were chargeable with *notice* of his ineligibility; that votes cast for him were therefore ineffectual, and that his competitor, having received the greatest number of *legal* votes, though not a majority of the ballots, was duly elected. Notwithstanding the great consideration which these cases received, the author ventures with great deference to state that it is by no means clear to his mind that the mayor was a "judicial officer," within the meaning of the Constitution. See, as bearing upon the above

[2] Boyd *v.* Chambers, 78 Ky. 140; State *v.* Henshaw, 76 Cal. 436 (1888).

§ 428 (358). **Summary trials for Violations of Ordinances.** — We have elsewhere shown that the courts have uniformly held that it

was competent for the State legislatures to create municipal corporations with powers of local government, and to *authorize them to*

decision, and illustrative of the nature of the office of mayor, Howard *v.* Shoemaker, 35 Ind. 111 (1871); Morrison *v.* McDonald, 21 Me. 550 (1842); State *v.* Maynard, 14 Ill. 419 (1853); Commonwealth *v.* Dallas, 4 Dallas, 229; s. c. more fully, 3 Yeates (Pa.), 300 (1801); State *v.* Wilmington, 3 Harring. (Del.) 294 (1839). Authority of *a mayor* under a statute investing him with the *powers of a justice of the peace.* State *v.* Perkins, 4 Zabr. (24 N. J. L.) 409; 1 Harr. (N. J.) 237; Howe *v.* Plainfield, 8 Vroom (37 N. J. L.), 145; State *v.* Zeigler, 3 Vroom (32 N. J. L.), 262; explained, McConvill *v.* Jersey City, 10 Vroom (39 N. J. L.), 38, 42; Bain *v.* Mitchell, 82 Ala. 304; Robinson *v.* Benton County, 49 Ark. 49. See Baton Rouge *v.* Dearing, 15 La. An. 208. A *constitutional* provision as to eligibility "to the *office of judge* of any court of the State," &c., and requiring a two years' residence "in the division, circuit, or county," was considered to have no reference to the office of *recorder* of a city. The People *v.* Wilson, 15 Ill. 389.

In *Michigan*, under constitutional provisions dividing the State into judicial circuits, and establishing circuit courts as the courts of general original jurisdiction, but authorizing the establishment, by the legislature, of municipal courts in cities: *Held*, that the original purpose of such municipal courts was not to destroy or materially change the jurisdiction of the circuits, but to relieve them of part of the increased litigation resulting from the growth of large cities. Such courts cannot have, in any class of cases, a jurisdiction territorially coextensive with the limits of the county, much less of the entire State. They were designed to meet the wants of the cities wherein they are established. A statute which gives a municipal court jurisdiction, where original process is served within the city, though neither party is a resident, or where service is had anywhere in the county, if plaintiff resides in the city, is unconstitutional and void. Grand Rapids, N. & I. S. R. Co. *v.* Gray, 38 Mich. 461 (1878).

The Constitution of *Nevada* provided that "the legislature may also establish courts for *municipal purposes only*, in incorporated cities and towns," and it was held that an act authorizing the city recorder to exercise the duties of committing magistrates in respect to offences against the public laws of the State was in conflict with the Constitution. Meagher *v.* Storey Co., 5 Nev. 244. The Constitution of *Maryland* contains a provision that "the *judicial power* of the State shall be vested in a court of appeals, in circuit courts, in such courts for the city of Baltimore as may be hereafter prescribed, and in justices of the peace;" and it was held that the legislature might authorize municipal courts to try and punish disorderly persons and lewd women within the corporate limits, and generally to authorize the corporate authorities to exercise *police powers*, which were distinguished from the ordinary judiciary powers of the State. Shafer *v.* Mumma, 17 Md. 331 (1861). Further as to construction of Constitution of *Maryland* as to judicial powers of mayors. Hagerstown *v.* Dechert, 32 Md. 369 (1869).

Under the Constitution of *North Carolina* "special courts" are authorized "for the *trial* of misdemeanors in cities and towns where they may be necessary;" and it was held to be no objection to an act of the legislature that it did not authorize the officers of such court to *try* persons charged with misdemeanors, but only to bind them over. State *v.* Pender, 66 N. C. 313 (1872). But under the Constitution the legislature cannot confer upon mayors the judicial powers of justices of the peace in *civil* actions. Edenton *v.* Wool, 65 N. C. 379.

The amendment of the Constitution of *Massachusetts* of 1821 provided that "no judge of any court of this commonwealth shall at the same time hold the office of governor, &c., or have a seat in the senate or house of representatives." A judge of a police court for the city of Lynn was elected a member of the house of representatives, and took his seat as such. Police courts were created after the adoption

adopt ordinances or by-laws, with appropriate penalties for their violation. The power to do this includes, by fair implication, the power to authorize *violations of ordinances* (where the acts are not criminal in their nature, or within the meaning of constitutional provisions requiring an indictment and securing the right to a jury trial) to be tried and determined in a summary manner by a local or corporation tribunal.[1]

§ 429. **How and in what Name prosecuted.** — The *distinction between statute law and municipal by-laws* has been pointed out, and the subject of concurrent prohibitions of the same act by the general law and by the local ordinances of a municipality treated in the chapter on Ordinances. The distinction is there drawn, and is to be observed, between acts not essentially criminal, relating to municipal police and regulation, and those intrinsically criminal, and which are made punishable as public offences by the general laws of the State. The pecuniary penalties which are annexed to violations of the for-

of the constitutional amendment in question, and were vested at first with the same civil and criminal jurisdiction as justices of the peace. The courts thus established were organized judicial tribunals, having attributes and exercising judicial functions independently of the magistrates designated to hold them, and were thus distinguished from justices of the peace, on whom personally certain judicial powers are conferred by law; and the judges of such courts must, by the Constitution, be appointed during good behavior instead of for seven years, as in the case of justices of the peace. It was held that *a police court is a court of the commonwealth* within the constitutional amendment, and that the judge thereof vacated his office as such judge by accepting another official trust incompatible therewith. Commonwealth *v.* Hawkes (*quo warranto*), 123 Mass. 525 (1878). Mr. Chief Justice *Gray's* opinion is highly instructive.

In *Wisconsin*, says *Ryan*, C. J., in State *v.* Lockwood, 43 Wis. 403 (1878), the right of trial by jury upon information or indictment for crime is secured by the Constitution, and cannot be waived; and the trial of an information by a judge of a municipal court without a jury was held not to be a legal trial, and the judgment of the municipal magistrate was declared to be void. The chief justice says in substance that a plea of not guilty to an information or indictment for crime, whether felony or misdemeanor, puts the accused upon the country, and can be tried by a jury only. The rule is universal as to felonies; not quite so as to misdemeanors. But the current of authority appears to apply it to both classes of crime; and this court holds that to be safer and better alike in principle and practice. Cooley's Const. Lim. 319, 410, *n.*: Proffatt's Jury Tr. sec. 113; Neales *v.* State, 10 Mo. 498; State *v.* Mansfield, 41 Mo. 470; Commonwealth *v.* Shaw, 1 Pittsburg (Pa.), 492. In the latter case will be found a collection of authorities bearing on the question of waiver of the right to a jury trial in criminal cases.

The Constitution of *Illinois* of 1870 provides that "the right of trial by jury, as *heretofore* enjoyed, shall remain inviolate." Under this provision the *vagrant act*, denying to persons arrested for vagrancy the right of trial by jury, was considered by *McAllister*, J., in view of the previous legislation and constitutional provisions referred to by him, to be unconstitutional. Scully and O'Leary, *In re*, 11 Chicago Legal News, 27 (1878). See *ante*, sec. 401; *post*, sec. 433. Defendant may waive statute provision. State *v.* Kaufman, 51 Iowa, 578.

[1] *Infra*, sec. 432 *et seq*; *ante*, sec. 368.

mer class, the legislature may, we think, authorize *the corporation to enforce in its own name*, by civil action or by complaint, and provision need not necessarily be made that they shall be prosecuted in the name of the people or of the State.[1]

[1] Barter *v.* Commonwealth, 3 Pa. (Pen. & W.) 253; Weeks *v.* Forman, 1 Harrison (N. J.), 237; Ewbanks *v.* Ashley, 36 Ill. 177; Williams *v.* Augusta, 4 Ga. 509; Floyd *v.* Commissioners, 14 Ga. 354; Kip *v.* Paterson, 2 Dutch. (N. J.) 298; Lewiston *v.* Proctor, 23 Ill. 533; State *v.* Jackson, 8 Mich. 110. See State *v.* Stearns, 11 Fost. (31 N. H.) 106; Goddard, Petitioner, 16 Pick. (Mass.) 504; Fink *v.* Milwaukee, 17 Wis. 26; *ante*, secs. 411, 412 and cases; *post*, sec. 431 *et seq.*, and cases in notes. The legislature may enact that suits for the violation of municipal ordinances shall be prosecuted in the name of the people of the State. Pillsbury *v.* Brown, 47 Cal. 478 (1874).

The Constitution of the State of *Iowa* contains this provision: "The style of all process shall be 'The State of Iowa,' and all *prosecutions* shall be conducted in the name and by the authority of the same." Constitution of Iowa, Art. V. sec. 8. The charter of the city of Davenport in terms authorized *prosecutions* for violations of municipal ordinances to be instituted in the name of the city, and it was contended that this portion of the charter was in conflict with the above quoted provision of the Constitution. But the Supreme Court, in the case of Davenport *v.* Bird, 34 Iowa, 524 (1871), held otherwise. It was a prosecution in the name of the city against the defendant for a violation of an ordinance of a police nature, but for which, under the charter, the city was authorized to punish by a limited fine and imprisonment. In giving the opinion of the court, *Miller*, J., says: "Is it necessary, under the Constitution, that all prosecutions for violations of municipal police ordinances shall be conducted *in the name and by the authority* of the State of *Iowa?* Or, in other words, is that clause of the city charter of Davenport, which directs that 'all suits, actions, and prosecutions be instituted, commenced, and prosecuted *in the name of the city of Davenport*,' in conflict with the constitutional provision before referred to? We are of opinion that it is not. This clause of the Constitution occurs in Art. V., which treats of the judicial department of the government. This article vests and defines the judicial power of the State, establishes the tenure of office of the judges, and defines the mode of their election; fixes their salary and limits the number of judicial districts; provides for the election of an attorney-general, and other matters pertaining to the judicial arm of the State, among which is the clause under consideration. From all this it seems manifest that the requirement 'that all *prosecutions* shall be conducted in the name of "The State of Iowa,"' contemplates such criminal *prosecutions* as shall be instituted and prosecuted before the tribunals which are provided for in that article of the Constitution under the statutes of the State. It is fitting and appropriate that prosecutions for violations of the criminal laws of the State should be carried on in the name of the government. But there is no fitness or propriety in requiring the State to be a party to every petty prosecution under the police regulations of a municipal corporation. Such a construction of this article of the Constitution seems to us to be unwarranted, and not intended by the framers of the Constitution. It was held by the Supreme Court of *Pennsylvania* that the word '*process*,' in the 12th section of the 5th article of the Constitution of the State, which provides that 'the style of all process shall be the *Commonwealth of Pennsylvania*,' was intended to refer to such writs only as should become necessary to be issued in the course of the exercise of that *judicial power* which is established and provided for in the article of the Constitution, and forms exclusively the subject-matter of it. On the same principle, we are of opinion that the word 'prosecutions,' in the 8th section of art. V. of our Constitution, was intended to refer only to such criminal prosecutions under State laws as should be cognizable by the *judicial power*, which is established and provided for in that article, and that it was not intended to include prosecutions under ordinances of municipal corporations cognizable before local police magistrates." And the same view is held by the Court of Appeals of *Kentucky*. Williamson *v.* Commonwealth, 4 B. Mon. (Ky.) 146 (1843). But in *Nebraska* the Constitution provides that "all process and other proceedings shall run in the name of the State," and this was held to include prosecutions under municipal ordinances, where the penalty was fine and imprisonment; but *quære*. Brownville *v.* Cook, 4 Neb. 101 (1875). As to mode of enforcement of ordinances and requisites of complaints, *vide* chapter on Ordinances, secs. 408–412, and notes.

§ 430 (359). **Constitutional Limitations on Jurisdiction; Powers.** — In *creating local tribunals, however, and in prescribing their jurisdiction*, the legislature should keep in view two cardinal considerations: *First.* That these inferior courts will have only such jurisdiction, and can exercise only such powers, as are *expressly* given or *necessarily* implied, and that fair doubts as to the extent of jurisdiction are resolved against the corporation; to this effect are all the authorities. *Second.* Regard must also be had to *constitutional* provisions intended to secure the liberty and to protect the rights of the citizen. The State Constitutions contain the substance of the clauses of *Magna Charta* to the effect that no citizen shall be deprived of life, liberty, or property but by the judgment of his peers or by the law of the land, and also provisions, more or less extensive, securing the right of trial by jury. These and other requirements of the fundamental law cannot be violated in acts of the legislature establishing and fixing the jurisdiction of the corporation court or tribunal.[1]

Citizens competent to be Local Judges, Jurors, and Witnesses.

§ 431 (360). **Municipal Judges, Jurors, and Witnesses.** — The maxim of the common law above adverted to, *that no one shall be a judge in his own case*,[2] *has no just application to legislation creating municipal courts*, and investing them with jurisdiction to try complaints for breaches of municipal ordinances. The mayor, though a citizen of the corporation, may be clothed with judicial powers of this character, and the inhabitants, though interested in a minute degree in the recovery, are, or at least may be declared, competent witnesses. In this respect the common-law rules have not been adopted and applied by the American courts to our municipal corporations;[3] or the courts have considered the common-law doctrine

[1] Zylstra *v.* Charleston, 1 Bay (S. C.), 382 (1794); Slaughter *v.* People, 2 Doug. (Mich.) 334 (1842). *Ante*, sec. 427, note and cases; *post*, sec. 432. A municipal court cannot sit outside the limits of the city. Hershoff *v.* Beverly, 43 N. J. L. 139.

[2] *Supra*, sec. 425.

[3] Thomas *v.* Mount Vernon, 9 Ohio, 290 (1839); Commonwealth *v.* Read, 1

as to the disqualifying effect of interest upon jurors and witnesses as expressly or impliedly abrogated by the usual legislative or charter provisions for the constitution of municipal courts, and conferring upon them jurisdiction to hear and try certain actions and proceedings by and against the municipality. But a distinction has been well drawn between corporation courts proper and the general courts of record; and in respect of ordinary actions in the latter class of courts, a taxpayer of a municipality is incompetent to serve as a juror where the municipality is a party, unless made competent by legislative provision, expressly or by implication.[1]

Gray (Mass.), 475; Lexington *v.* Long, 31 Mo. 369 (1861); Commonwealth *v.* Ryan, 5 Mass. 90; Cooley Const. Lim. 410, 412; Wheeling *v.* Black, 25 W. Va. 266.

In the City Council *v.* Pepper, 1 Rich. (S. C.) Law, 364 (1845), the defendant, *a non-resident of the city*, was prosecuted in the city court, established by act of the legislature, for violation of a city ordinance. The defendant made the point that, as the judge of that court, the sheriff, and jurors were corporators, and therefore interested in the penalty, they were incompetent to try the cause. In holding this objection unsound, the Court of Appeals, after alluding to Hesketh *v.* Braddock, 3 Burr. 1847, cited *ante*, sec. 425, relied on by the defendant, remarks: "The statutory authority given to the city court to try all offenders against city ordinances impliedly declares that, notwithstanding the common-law objection, it was right and proper to give it the power to enforce the city laws against all offenders. The interest is too *minute*, too slight to excite prejudice against a defendant; for the judge, sheriff, and jurors are members of a corporation of many thousand members. What interest of value have they in a fine of twenty dollars? It would put a most eminent calculator to great trouble to ascertain the very minute grain of interest which each of these gentlemen might have. To remove so shadowy and slight an objection, the legislature thought proper to clothe the city court, consisting of its judge, clerk, sheriff, and jurors, with authority to try the defendant, and he cannot now object to it." *Per O'Neall*, J., City Council *v.* Pepper, 1 Rich. (S. C.) Law, 364 (1845). City Council *v.* King, 4 McCord (S. C.) 487; Corwein *v.* Hames, 11 Johns. (N. Y.) 76 (1814). The mayor is not disqualified from presiding in the mayor's court, before which the proceedings are held, by the fact that he is the owner of a lot on the street sought to be widened. Lexington *v.* Long, 31 Mo. 369 (1861). The mayor and council having jurisdiction to declare what is a nuisance, the fact that they have employed an attorney to prosecute a case does not disqualify them, nor does the interest which they have in common with other citizens. Montezuma *v.* Minor, 73 Ga. 484.

[1] Diveny *v.* Elmira, 51 N. Y. 506 (1873). This was action of tort in the Supreme Court of the State against the city of Elmira for damages to the plaintiff caused by a defective sidewalk, which the city was bound to repair. The question was whether a taxpayer of the city was a competent juror. It was held by the Commission of Appeals that at common law the interest of such a juror would be a sufficient objection unless removed by statute, and that as respects the defendant city it had not been thus removed. Mr. Commissioner *Earl*, in delivering the judgment of the court, said: "The charter of Elmira provides for the election of justices of the peace, clothed with authority to hear and try actions in the same manner as justices of towns, and the city may sue before such justices to recover penalties and forfeitures, and such suits must be tried like civil actions before justices of towns. The defendants in such action may, of course, demand jury trials, and jurors must be summoned from the city, and cannot be summoned elsewhere. Hence, it may be well that in such actions before justices of the peace the incompetency of juries on account of interest is, by implication, removed, for otherwise the justices would be practically deprived of jurisdiction to try the causes which are authorized to be commenced before them. Commonwealth *v.* Ryan, 5 Mass. 90. But there is no such practical difficulty in courts of record held in the city; and hence there is no reason for holding that in actions tried in them, in which the city is interested, the incompetency of jurors on account of interest has been removed. I therefore conclude that the common-law rule of incompetency on account of interest applied to these jurors, and that they were properly challenged and excluded. Whatever inconvenience may flow from such a holding may be remedied by the legislature. We must administer the law as we find it." 51 N. Y. 512. And it has also been elsewhere decided that in an action to recover damages against a municipality, a resident taxpayer is not competent to sit as a juror if challenged for cause. Fulweiler *v.* St. Louis, 61 Mo. 479 (1876); Rose *v.* St. Charles, 49 Mo. 509; Johnson *v.* Americus, 46 Ga. 80; but under the code of *Georgia* this rule does not obtain. Cartersville *v.* Lyon, 69 Ga. 577; see Omaha *v.* Olmstead, 5 Neb. 446 (1877). One who is specially interested in having a street laid out held not disqualified to act as a juror in proceedings for the taking of private property for the purposes of the street. Kundinger *v.* Saginaw, 59 Mich. 355. See Kemper *v.* Louisville, 14 Bush (Ky.), 87.

By statute of *Massachusetts* an inhabitant of the city of Boston is competent as a juror in such cases, but this provision does not make a member of the common council of that city competent. Boston *v.* Baldwin, 139 Mass. 315. The inhabitants of a town are not disqualified from serving as grand jurors in presenting an indictment for forgery with intent to defraud the town, — the interest is too remote and is different from a direct financial interest. Commonwealth *v.* Brown, 147 Mass. 585 (1888). *Knowlton*, J., reviews the cases and considers the question with care. Juror not disqualified to sit on a trial for a violation of the ordinance of his own city. State *v.* Wells. 46 Iowa, 662.

Summary Proceedings may, in Certain Cases, be authorized. — Jury Trial.

§ 432 (361). **Summary Procedure; Jury Trial.** — Proceedings for the *violation of municipal ordinances are frequently summary in their character*, and it has been made a question how far statutes or charters authorizing such proceedings are valid, especially where no provision is made for trial by jury. This must depend upon the nature of the act or omission, and upon the Constitution of the State and the extent to which the power of the legislature is therein restricted. Offences against ordinances properly made in virtue of the implied or incidental power of the corporation, or in the exercise of its legitimate police authority for the preservation of the peace, good order, safety, and health of the place and which relate to minor acts and matters not embraced in the public criminal statutes of the State, are not usually or properly regarded as *criminal*,[1] and hence need not necessarily be prosecuted by indictment or tried by a jury.[2] An act of the legislature authorizing the arrest

[1] *Ex parte* Hollwedell, 74 Mo. 395.

[2] Williams *v.* Augusta, 4 Ga. 509 (1848); approved, Floyd *v.* Commissioners, 14 Ga. 358 (1853); Vason *v.* Augusta, 38 Ga. 542 (1868); *post*, sec. 411, and notes; State *v.* Guttierrez, 15 La. An. 190; Tierney *v.* Dodge, 9 Minn. 166, 169; see St Peter *v.* Bauer, 19 Minn. 327, 332, (1872), where