

THE
BENGAL MUNICIPAL ACT
BEING
ACT III OF 1884 (B. C.)
as amended by
ACTS III OF 1886, IV & VI OF 1894 & II OF 1896 (B C.)

WITH
NOTES AND AN APPENDIX.

BY
BHAIRAB CHANDRA DUTT, B. L.,
PLEADER, JUDGE'S COURT
AND
PLEADER TO THE HOWRAH MUNICIPALITY.

SECOND EDITION:
(REVISED AND ENLARGED.)

Calcutta :
PUBLISHED BY THE CALCUTTA V



PRINTED BY
SURENDRA NATH BHATTACHARYA,
AT THE
BRITISH INDIA PRINTING WORKS,
HOWRAH.

PREFACE TO THE SECOND EDITION.

The notes have been thoroughly recast and brought up to date. They have been grouped under appropriate heads printed in bold type, and the leading English cases bearing on the subjects dealt with in the Act have been noticed in their proper places. The Appendix has been considerably enlarged by the inclusion of new matter as well as some important minor Acts closely connected with the administration of the Bengal Municipal Act.

It is a matter of deep regret to the present editor, that in bringing out a second edition of this work, he has been deprived of the help of his former collaborator, the late Babu Anukul Chandra Mitra, by the untimely death of that gentleman.

HOWRAH, }
August, 20, 1903.

B. C. D.

PREFACE TO THE FIRST EDITION.

The present volume is intended to supply a cheap handy edition of an Act, which should now be in the hands of every municipal citizen of Bengal. Care has been taken to make the notes as full as possible, consistent with brevity, and materials have been collected not only from the reported cases and the debates in the Council, but also from the newspaper reports of important unreported cases and Government Circulars and Resolutions. In the Appendix will be found all the important Rules framed by Government under the Act. It is hoped that the work will be a useful handbook to the municipal authorities as well as to the public at large.

The editors take this opportunity of giving their hearty thanks to their friend, Babu Mahendra Nath Ray, M. A. B. L., Vakıl, High Court, for the valuable assistance received from him in the course of the preparation of the work.

HOWRAH, }
31, January, 1895. }

A. C. M.

B. C. D.

CONTENTS.

Preamble.

PRELIMINARY.

Sections.—

1. Short title & commencement.
2. Enactments repealed.
Saving clause.
"Notifications" defined.
3. Existing municipalities.
4. All property of late Comrs vested in Comrs. under this Act.
5. Act not to be extended to cantonments without consent of Governor-General.
6. Definitions.

PART I.

Of the creation of Municipalities.

7. Existing Comrs. & rates & taxes temporarily continued.
8. Loc. Govt. may extend Act.
9. Notification of intention to alter limits of municipality.
- 9A. Objection to proposed alteration may be submitted to Local Govt.
- 9B. Loc. Govt. may apportion & dispose of municipal property upon subdn. or union of municipalities.
10. Conditions on wh. municipality may be created.
- 11-12. [*Repealed*]

PART II.

Of the Municipal Authorities.

Of the constitution of the municipality.

Sections—contd.

13. Number of Comrs.
14. Constitn. of body of Comrs.
15. Rules to be laid down for election.
"Rates" defined.
16. First election of Comrs.
On failure of election, Comrs. to be appointed by Govt.
17. Certain municipalities excluded from elective system.
18. [*Repealed*]
19. Removal of Commissioner by Local Government.
20. Removal of Comrs. by Commissioner of Division.
21. Tenure of office of Comrs.
22. Certain Comrs. not to be elected, re-elected, consent of Loc. Govt.
23. Appointment of Chairman.
24. Status & tenure of office of Chairman.
25. Election of Vice-Chairman.
- 25A. Ex-officio appointments.
26. Tenure of office under ss. 21, 24 & 25.
- 26A. Resigntn. of Ch. & V.-Ch.
- 26B. Leave may be granted to Chairman or Vice-Chairman.
27. Apptn. or electn. of Comrs., Ch. or V.-Ch. for unexpired term of office, or during leave of absence.
- 27A. Resignation of Ch. & V.-Ch. or Comrs.
28. Allowances of Ch. & V.-Ch.
29. Incorporation of Comrs.
- 29A. Delegation of powers & functions of Loc. Govt.

*Of property of the Comrs.**Sections—contd.*

- 30. Public roads, &c., vested in Comrs.
- 31. Comrs. may, with consent of owners, take over & repair roads &c.
- 32. Existing hospitals, schools, rest-houses, &c., may be vested in Comrs.
- 33. Transfer to be conditional in certain cases.
- 34. Power to purchase, lease & sell lands.
- 35. Land may be taken up under L. Acquisition Act, 94
- 36. Comrs. to pay cost of land.
- 37. Execution of contracts
- 37A. Formation of Jt. Committees
- 37B. Voluntary introduction of water-supply or drainage
- 37C. Sanitary Board with a Comtte to consider & report on scheme.
- 37D. Loc. Govt. may sanction, modify or refer scheme.
- 37E. Distribution of costs of scheme.
- 37F. Approved scheme to be published.
- 37G. Sanction of scheme.
- 37H. Scheme to be carried out by municipalities.
- 37I. Local Govt. may appoint officer to execute works.
- 37J. Cost of scheme advanced from public funds.
- 37K. Compulsory introduction of water-supply or drainage.
- 37L. Application of Part VII.
- 37M. Ch. not to exercise powers of Comrs.

Of the Mode of transacting business of Municipality.

- 28. Comrs. to meet ordinarily once a month.
Meeting not invalidated for non-service of notice.
- 29. Comrs. to meet at other times on special requisition.

Sections—contd.

- 40. Who to preside at meetings of Comrs.
- 41. Questions to be decided by majority.
Casting vote.
- 42. Quorum.
Adjourned meetings.
- 43. Minutes of proceedings.
- 44. Powers of Chairman.
- 45. Chairman may delegate powers &c. to Vice-Chairman.
- 46. Appointment of subordinate officers.
- 47. Comrs. may frame rules for pensions, gratuities or provident or annuity fund.
- 48. Pensions, &c. to Govt. officials.
- 49. Security from officers & servants.

Of Ward Committees.

- 50. Appointment or election of ward committees.
- 51. Comrs. may lay down rules for election.
- 52. Election of Ch. & V.-Chairman of ward committee.
- 53. Comrs. may delegate powers to ward committee.
- 54. Secs. applicable to transaction of business by wd. committees.
- 55. Removal, Resignation & appointment of members.

Liability of Comrs. & Ward Committees.

- 56. Personal liability of Comr. or member of ward committee.
- 57. Disqualification of Comrs. having share or interest in contracts.
- 58. Comrs. disqualified from voting on certain questions.

Control.

- 59. Certain resolutions subject to approval of Govt.
- 60. Copy of minutes to be sent to Magistrate.

Sections—contd

61. Sanction to appointment of subordinate officers.
62. Magte's power of inspection.
63. Power to suspend action under Act.
64. Powers of Loc. Govt. in case of default.
65. Power to supersede Comrs in case of incompetency, default or abuse of powers.
66. Consequences of supersession.
- 66A. Disputes.

PART III.**Of the Municipal Fund**

67. What shall constitute municipal fund.
68. Payment on account of interest on loans & establishment.
69. Purposes to which municipal fund is applicable.
- 69A. Receipts & expenditure on acct. of hospitals & dispensaries.
- 69B. Power to make rules.
70. Expenditure outside municiplty.
71. Account books to be kept & quarterly statement published.
72. Annual statement to be prepared.
73. Estimate to be published.
74. Estimate to be transmitted to Magistrate.
75. Magte. may record remarks.
76. Powers of Commissioner as to estimates.
77. Estimate of expenditure may be revised.
78. Disbursement of expenditure sanctioned in estimate.
79. Power of Local Govt, if work estimated cost more than 5,000 Rs.
80. Disbursement of excess expenditure
81. Annual report of proceedings, &c., to be submitted.

Sections—contd.

82. Keeping of registers & submission of returns.
Local Govt. appoint special officer to examine & report on accounts.
83. Custody of municipal fund.
84. Orders for payment of money from municipal fund.

PART IV.**Of Municipal Taxation.**

85. Tax upon persons & holdings.
86. Additional taxes.

Of the Tax on Persons.

87. Assessment list to be prepared.
88. Duration of assessment.
89. Assment. of public buildings.
90. Procedure if aggregate amount of rates assessed on any person exceeds 84 Rs. per annum.
91. Power of exemption.
92. Power to apply for reduction of assessment in altered circumstances.
93. Power to alter assessment.
94. Procedure on change of occupation.
95. Assessment on vacant holdings when to cease.

Of the Rate on the Value Holdings.

96. Comrs. to determine valuation of holdings.
97. Duration of assessment.
- 97A. Effect of alteration of percentage.
98. Buildings exempted from tax. Exemption of charitable holdings.
99. What returns may be required for ascertaining annual value.

Sections—contd.

- 100. Penalty for default in furnishing return.
- 101. Annual value of holding how to be ascertained.
- 102. Determination of rate of tax.
- 103. Preparation of valuation & rating list.
- 104. Power to assess on house consolidated tax for house & land on which it stands.
- 105. Tax due from non-resident owner recoverable from occupier & deducted from rent.
- 106. Power of Comrs in cases of excessive hardship.
- 107. Application for reduction of assessment.
- 108. Power to revise valuation.
- 109. Power to revise assessment list.
- 110. Remission or refund for vacancy.
- 111. Penalty.

Of Genrl. Provisions relating to both taxes & recovery thereof.

- 111A. Appointment of assessor.
- 112. Publication of notice of assessments.
- 113. Application for review.
- 114. Procedure upon review.
- 115. Limitation for application.
- 116. Assessment to be questioned only under Act.
- 117. Office hours for paying tax.
- 118. Tax payable in advance.
- 119. Receipts to be given.
- 120. Bill & notice to be presented.
- 121. If not paid in 15 days process of distress may issue.
- 122. Distress how made.
- 123. Officer may break open door.
- 124. Sale how to be conducted. Return of sales.
- 125. Certain persons prohibited from purchasing at sales. Penalty.
- 126. Comrs. to keep account of distress and sales.

Sections—contd.

- 127. Sale of property out of municipality.
- 128. Distress and sale not unlawful for want of form.
- 129. Comrs. may sue for tax.
- 130. Irrecoverable taxes.

Of the Tax on Carriages, Horses and other Animals.

- 131. Tax on carriages, horses and other animals.
- 132. Tax so fixed to continue in force until altered.
- 133. Licenses how to be obtained.
- 134. Proportionate tax on carriages &c., acquired during $\frac{1}{2}$ year.
- 135. On payment of tax, Comrs. to give a license.
- 136. Carriage, &c., taxable even in owner's absence.
- 137. Penalty.
- 138. Commissioners may compound with livery stable-keepers.
- 139. List of persons licensed to be prepared.
- 140. Powers to inspect stable, &c., and to summon persons, liable to tax.
- 141. Refund of tax.
- 141A. Prohibition of double fee.
- 141B. Meaning of "used in the ordinary course of business."

Of the Registration of Carts.

- 142. Registration and number of carts.
- 143. Fee for registration.
- 144. Proportionate payment of fee.
- 145. Transfer of ownership.
- 146. Penalty.
- 147. Seizure and sale of unregistered cart.
- 147A. Prohibition of double fee. Apportionment of fees. Levy of fee when cart registered in more than one municipality.
- 147B. Meaning of "used in the ordinary course of business."

Of Tolls on Ferries.

- 148. Existing public ferries.
- 149. Other ferries may be declared to be municipal.
- 150. Duties of Commissioners in regard to such ferries.
- 151. Rate of tolls to be established and published.
- 152. When persons crossing river not liable to toll.
- 153. Cancellation of ferry lease, &c.
- 154. Toll must be prepaid. Penalty.
- 155. Keeping of unauthorised ferry.
- 156. Penalty.

Of Tolls on Bridges and Roads.

- 157. Existing toll bars.
- 158. Comrs. may establish toll-bars.
- 159. Comrs. to publish expenses, &c., of toll-bars.
- 160. Rates of tolls to be established and published.
- 161. Power of Collector or lessee, in case of refusal to pay toll.
- 162. Penalty for refusing to pay or avoiding payment of toll.
- 163. In case of non-payment of toll, vehicle, &c., may be seized and sold.

Of General Provisions relating to Tolls on Ferries and Roads.

- 164. Lease of ferry or toll-bar.
- 165. Table of tolls to be hung up.
- 166. Penalty.
- 167. Composition in respect of toll.
- 168. Exemptions.
- 169. Police-officers to assist.
- 170. Penalty for taking unauthorised tolls.
- 171. Comrs. may be appointed to collect tolls in a navigable channel.

- 172. Loc. Govt. may order Comrs. to cease levying tolls.

PART V.**Municipal Regulations which shall be Generally in force in all Municipalities.***General.*

- 173. Operation of this Part.
- 174. Loc. Govt. may order provisions of this Part to be not in force in any municipality.
- 175. Procedure when owners or occupiers required to execute works by Commissioners.
- 176. Person required to execute any work may prefer objection to the Commissioners.
- 177. Procedure if person objecting alleges that work will cost more than Rs. 300.
- 178. Chairman &c., may make order after hearing objection.
- 179. Order to be explained orally.
- 180. Power of Comrs. on failure of person to execute work.
- 181. Comrs. may apportion expenses among owners.
- 182. Apportionment among owners and occupiers.
- 182. Occupier may recover cost of works executed at his expense from owner.
- 184. Liability to pay expenses or fees may be contested in Civil Court.
- 185. Damages and compensation how to be determined.

Of Sewage, Offensive Matter, Rubbish, Privies and Drains.

- 186. Establishments for removal

of sewage, offensive matter and rubbish.

187. Hours and mode of removal of offensive matter.
188. Mehters must give one month's notice if they leave the service of the Commissioners.
189. Commissioners may appoint hours for placing rubbish on public road.
190. Drains, privies and cess-pools under control of Commissioners.
191. Inspection of drains, privies and cess-pools.
192. Commissioners may direct the use of disinfectants or deodorants for such drains, privies, &c as are in a noxious state.
193. Common privies.
194. Licensing of public necessities.
195. Power to require owners to clear noxious vegetation and improve bad drainage.
196. All rubbish collected to be the property of Municipal Commissioners.
197. Sewers, drains &c. under control of the Commissioners.

Of Bathing and washing places and Tanks.

198. All public streams, &c., to be under direction and control of the Commissioners.
199. Commissioners may make provision for drinking water, bathing places, &c.
- 199A. Prohibition by Commissioners of use of unwholesome water.
200. Power to require unwholesome tanks or private premises to be cleansed or drained.

Commissioners may retain possession of tank or pool until expenses for reexcavation, &c., are realized.

Of obstructions and encroachments on Roads.

201. Power to close a road or part of a road for repairs, or other public purpose.
202. Removal of future obstructions or encroachments on road.
203. Procedure when person who erected obstruction cannot be found.
204. Projections from houses erected in future to be removed.
205. Effect of order made under sections 202, 203, 204 or 233
206. Houses projecting beyond line of road or drain, when taken down to be set back.
207. Fallen house, &c, obstructing road or drain to be removed by owner.
208. Commissioners may require land-holders to trim hedges, &c.

Of General Conservancy and Improvement.

209. Wells, tanks, &c., to be secured.
210. Fencing of buildings in a dangerous state.
- 210A. Commissioners may require owners to pull down ruins.
211. Power to enter upon possession of houses so repaired.
212. Sale of materials of houses, &c., pulled down.
213. Stray dogs to be killed at certain appointed periods.
214. Comrs. may offer rewards for destruction of noxious animals.

215. Names of roads and numbers of houses.

Penalties.

216. Offences under sections. 189 and 215.
 217. Occupier not removing filth, &c.
 Keeping unlicensed public necessary.
 Not keeping private drain, &c., in proper order.
 Disobeying order under sec. 193 or 199A.
 Erecting obstruction.
 218. Disobeying requisition under sec. 202, 204, 206, 207 or 208.
 219. Disobeying requisition under section 195, 200, 209, 210 or 210A.

PART VI.

Of Special Regulations.

220. Operation of Parts VI, VII, VIII, IX and X
 Saving clause.
 221. Local Government may order the provisions of the said Parts to be in force.
 222. Publication of order.
 223. Local Government may cancel or modify order.

Of a Survey.

- 223A. Survey of a municipality.

Of Privies, Drains and Excavations.

224. Commissioners may require owner or occupier to repair drain, &c.
 225. Privies must be properly enclosed.
 226. Unauthorized drains leading into public sewers may be demolished.
 227. Commissioners may require owner to drain land.
 228. Group or block of houses, &c.,

may be drained by a combined operation.

229. Commissioners may alter any drain, &c., made contrary to their orders.
 230. No latrine, &c., to be constructed within fifty feet of tank or water-course.
 231. Construction of privy.
 232. Power to prohibit excavations.
Of Obstructions and Encroachments on Roads.
 233. Removal of existing projection from houses.
 234. Leave to deposit materials on, or to excavate or close a road.
 235. Hoards to be set up during repairs.

Of Building Regulations.

236. Roofs and external walls not to be made of inflammable materials.
 237. Notice of erecting a house not being a hut.
 238. Comrs. may order a house not being a hut erected without notice, etc., to be altered or demolished.
 239. Sanction available for one year only.
 240. Definition of expression "erect or re-erect any house, not being a hut."
 241. Power of the Commissioners to make rules as to mode of construction of houses not being huts.
 242. Comrs. may prohibit letting of unstable or ill-drained house.
 242A. Appeals from orders of Commissioners.
 243. Erection of new huts to be under the control of the Commissioners.
 244. Power to direct removal of huts built without notice.

Of Sanitary Measures with regard to Blocks of Huts.

245. Power of Commissioners as to inspection of huts.

246. On receipt of report, Commissioners may cause notice to be served.
 247. Expenses may be recovered by instalments or remitted in case of poverty.
 248. Sale of huts.

*Of the Regulation of the Sale
of Food, Drink and Drugs*

249. Markets, slaughter-houses, &c., to be properly drained.
 250. Sale of unwholesome food or drink.
 251. Prohibition of the sale of articles of food not of the proper nature, substance or quality.
 251A. No proceedings to be had without leave of the Commissioners.
 251B. Power of Commissioners to enter and inspect markets, shops, &c., and to seize unwholesome articles exposed for sale.
 251C. Power to destroy unwholesome articles.
 251D. Person refusing to sell any article to Commissioners liable to penalty.
 252. Registry of shops for sale of European drugs.
 Certificated dispensers.
 253. Inspection of drugs. &
 Compensation if drug be not adulterated.

*Of Burial and Burning
Grounds.*

254. Registration of existing burial and burning grounds.
 255. No new or disused burial or burning place henceforth to be used without leave of Government or of Comrs.
 256. Comrs. may order certain burial or burning grounds to be closed.

- 256A. Private burial-places may be excepted.
 256B. Appeals from orders under sections 256 and 256A.
 257. Prohibition to bury or burn in unregistered ground.
 258. Comrs. may cause corpses to be burnt or buried according to the religious tenets of the deceased.
 259. Commissioners may provide places to be used as burial or burning grounds.
 260. Commissioners may provide for burial of paupers free of charge.
 260A. Power to license fuel shops at burning grounds.

*Of Certain Offensive and
Dangerous Trades or
Occupations.*

261. Certain offensive and dangerous trades not to be established within limits to be fixed by the Commissioners without license.
 262. Commissioners may, in certain cases, order the use of slaughter-houses and the carrying on of dangerous and offensive trades to be discontinued.
 262A. Commissioners may prohibit private kilns.
 263. Milkman, &c, not to keep animals or cattle without license.
 264. Commissioners may provide public stables.
 265. Conditions for keeping pig-sty.

Penalties.

266. Failing to shut out privy from view.
 267. Erecting huts without notice.
 268. Disobeying requisition under section 249.
 269. Cutting up road for passage

- of water, &c.
270. Throwing rubbish into sewers.
Allowing water of any sewer, &c., to run on any road.
Constructing latrine, &c., in contravention of sections 230 and 231.
Making excavations.
Making a roof or wall of grass, &c.
271. Disobeying requisition under sections 224, 225, 227, 230, 231 or 238.
272. Altering, &c., drains leading to public sewers.
Making drains contrary to the orders of the Comrs.
273. Offence under section 235, 238, 241 or 242.
Offence under section 261, 262A or 263.
Offence under sec. 261 or 263.
Offence under sec. 264.
Offence under sec. 265.
274. Burying or burning corpse on unregistered grounds.
275. Offence under sec. 252.
276. Uncertificated persons dispensing drugs.
277. Disobeying notice under section 262.
278. Suspension or revocation of license, &c.
285. Person sub-letting to several different tenants to be deemed occupier.
286. Owner to pay water-rate in certain other cases.
287. The Commissioners. to provide water-supply.
288. What are domestic purposes.
289. Pressure at which water must be kept.
290. Communication pipes.
291. Communication pipes, &c., must be made to satisfaction of officers of the Comrs.
292. Power to enter premises.
293. When pipes are out of repair, Commissioners may turnoff water.
294. Supply for business.
295. Householder entitled to certain supply of water for domestic use.
296. Commissioners may provide filtered or unfiltered water for latrines.
297. Water may be cut off on neglect to pay the rate.
298. Occupier in whose house water is wasted liable to penalty.
299. Person causing waste of water liable to penalty.
300. Commissioners at their discretion may allow person outside the town to take water.

PART VII.

Of a Water-supply.

279. Imposition of water-rate.
280. Valuation, assessment and collection of water-rate
281. Occupier paying water-rate may deduct one-fourth from rent due to owner.
282. When house is unoccupied, owner to pay one-fourth of water-rate.
283. Refund of water-rate when house ceases to be occupied.
284. Rate payable on house when re-occupied.
- Penalty.*
301. Before connection an officer of the Commissioners to cause all works and pipes to be inspected.
302. Connection with service pipes to be executed only by an officer of the Comrs.
303. Obstructing or diverting water.
304. Estimate and specification of works to be sent.
305. Owner to keep works in repair.
306. Tanks, &c., vested in the Comrs.

307. Application of rates and moneys received from the supply of water.

PART VIII

Of Lighting with Gas.

308. Municipal Commissioners may submit to the Local Government a plan for lighting.
309. Lighting-rate not exceeding three per centum may, after sanction of plan, be imposed on holding.
 Proviso as to portions already lighted.
310. Rate payable by occupiers quarterly in advance.
311. Valuation, assessment, and collection of lighting-rate.
312. Power to assess owners in certain cases
313. Owner to recover from the occupier rates paid by owner.
314. Owner may recover rate so paid as rent.
315. Occupier liable to the rate for time of occupation only.
 Excess paid in advance to be refunded.
 No rate to be charged during vacancy.
 Notice of cessation of occupancy to be given within seven days.
316. Unknown owner or occupier how to be designated.
317. Situation of gas-pipe or other gas-work to be altered, at the expense of the Comrs.
318. If owner, &c., neglect to make alterations, the Commissioners may cause the same to be made.
- 318A. Application of rates and moneys received for lighting.
319. Provisions applicable to other systems of lighting.

PART IX.

Of the Construction and Cleansing of Latrines.

320. Notice to be issued by the Commissioners.
321. Commissioners may levy fees.
322. Recovery of fees.
323. In certain cases fee may be levied from owner, who may recover from occupier.
324. Owner may recover fees from occupier as rent.
325. Commissioners may compound with occupier or owner of certain premises for fee.
326. Commissioners may levy a rate per head.
- 327, 328. [*Repealed.*]
329. Exemption from prosecution under section 217.
330. Powers of servants of Comrs.
331. Comrs. may require nightmen to take out licenses.
332. Commissioners may require latrine to be constructed, and in default may construct themselves.
333. Commissioners may require list of persons in a holding.
334. Penalty.
- 334A. Exemption of jails, &c.

PART X.

Regulation of Markets

335. Power to construct markets.
336. Definition of "Municipal market" and "market"
337. Commissioners may prohibit use of unlicensed markets.
338. Power to grant licenses for markets.
339. Duration of licenses and terms on which granted.

340. Chairman bound to certify fit places.

Existing markets.

341. Licenses to be registered.

342. Transfers to be registered.

343. Unregistered markets to be deemed unlicensed.

344. Penalty for using unlicensed market.

345. Power to close unlicensed places.

PART XI.

Of the Registration of Births and Deaths.

346. Registration of births and deaths.

347. On requisition of Government, Commissioners to appoint sub-registrars at burning-ghats and burial-grounds.

348. Information required by Beng. Act IV of 1873 to be given to such sub-registrar.

349. Information of deaths in hospitals.

PART XIA.

Extinction and Prevention of Fire.

349A. Establishment and maintenance of Fire-brigade.

349B. Power of fire-brigade and other persons for suppression of fires.

PART XII

Miscellaneous.

350. Power to make bye-laws

350A. Additional power to make bye-laws in hill-municipalities.

351. Confirmation of bye-laws.

Local Government may cancel its confirmation of any bye-law.

351A. Power to make rules as to business and affairs.

352. Commissioners may direct prosecution for public nuisance, &c.

353. No prosecution for an offence under this Act to be instituted without consent of Commissioners.

354. Publication of bye-laws, &c.

355. Levy of fines.

356. How notice, &c., may be served

357. Service of notice on owner or occupier of land.

358. Tax not invalid for want of form.

359. Holder of license to produce it when required.

Penalty.

360. Recovery of moneys due to the Commissioners.

361. Power to sell unclaimed holdings for money due.

362. Compensation for damages.

363. No action to be brought against the Commissioners or their officers until after one month's notice of cause of action.

364. Chaukidari chakran lands.

365. Police-officer to report offences and arrest persons refusing to give name and residence.

366. Penalty on officers, &c., taking unauthorized fees.

367. Saving clause.

Schedules.

Appendix.

Index.

THE
BENGAL MUNICIPAL ACT
BEING

ACT No. III OF 1884.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL
IN COUNCIL.

*(Received the assent of the Lieutenant-Governor on the
4th April 1884 and of the Governor-General on the
15th April 1884.)*

**An Act to amend and consolidate the law relating to
Municipalities.**

*As amended by Bengal Acts III of 1886, IV and VI of
1894 and II of 1896.*

WHEREAS it is expedient to consolidate and amend
the law relating to municipalities
within the territories subject to the
government of the Lieutenant-Governor of Bengal: It is
enacted as follows:—

PRELIMINARY.

1. This Act may be called the "Bengal Municipal
Act, 1884:"

Short title and com-
mencement.

And it shall come into force on
such date as the Lieutenant-Governor may direct, not being more than three months after the date on which it may be published in the *Calcutta Gazette*, with the assent of the Governor-General.

But any notification, order or rule, and any appointment to an office, may be made, or election held, under

this Act at any time after it shall have received the assent of the Governor-General, but shall not take effect until the Act comes into force.

This Act has been declared in force in the Santhal Parganas by Reg. III of 1873, Sec. 3, as amended by Reg. III of 1886, Sec. 2.

This Act was amended successively by Bengal Acts III of 1886, I of 1888, IV and VI of 1894 and II of 1896, which are to be read with and taken as part of this Act. The provisions of all these Acts have been duly incorporated in their proper places.

Act III of 1884 was published in the *Calcutta Gazette* on the 7th May, 1884 and came into force on the 1st August 1884 (*vide Cal. Gaz.*, 7th May 1884, Part I, p. 587.)

2. On the commencement of this Act, the enactments specified in the sixth schedule shall be repealed to the extent mentioned in the third column thereof.

Enactments repealed.

But this repeal shall not revive any office, authority or thing abolished by any such enactment, or affect the validity of anything done or suffered, or any right, title, obligation or liability accrued, before the commencement of this Act.

And all rules and bye-laws prescribed, assessments, valuations, measurements, divisions and appointments made, powers conferred, and notifications published under any such enactment, and all other rules (if any) now in force and relating to the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred and published hereunder.

In every enactment passed before this Act comes into force in which reference is made to Bengal Act III of 1864, (*the District Municipal Improvement Act*), or to any enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Act or to its corresponding part or section

Saving Clause.

And all proceedings now pending, which may have been commenced under any such enactment, shall be deemed to be commenced under this Act.

The expression "notifications" as used in this section shall be deemed to include, and to "Notifications" defined have always included, all directions, declarations and orders given, or made, and published under any enactment referred to in this section :

Provided that nothing in this definition shall be deemed to affect any decision or order of a competent Court made before the date on which this Act shall come into force.

In respect of all the matters aforesaid, the Commissioners under this Act shall be substituted for the Commissioners elected or appointed under the Bengal Municipal Act, 1876.

Changes.

Paragraph 4 has been substituted by Section 2 Sub section (2) of Beng. Act IV of 1894 for " And all references to any such enactment shall (so far as may be practicable) be deemed to be made to this Act".

Paragraphs 6 and 7 have been added by Section 2 Sub section (1) of Beng. Act IV of 1894.

Notes.

Prescribed—means *duly* or *lawfully* prescribed. A Bye-law framed under Sec. 313 of Beng. Act V of 1876, which is obviously *ultra vires*, can not be valid under this sec. — *Benimadhab Nag v. Moti Lal Das*, I. L. R. 21Cal., 837 Rules and Bye-laws, made under Beng. Act V of 1876 and not being inconsistent with the provisions of this Act, have thus been saved by this section.

"Notifications."—"The ruling of the High Court in what is known as the Kushtea Case (*Mahim Chandra Pal and another v. The Municipality of Kushtea*) made it necessary to define the meaning of the word "notification" so as to include declarations and orders made by Government. That decision has been set aside by a ruling of a Full Bench of the High Court, but it has been thought advisable to retain the definition for the sake of additional clearness." R. S. C.

The word "notifications" in this section includes an order under Section 234 of Beng. Act V of 1876, which shall be deemed to have been made under this Act, (*Duskunta Nath Dass v. Lolit Mohun Sirkar*, I. L. R. 20 Cal., 999 F. B., overruling the unreported judgment of Norris, J. in the Kushtea Case)

3. Every place which has been constituted a municipality under the provisions of the Bengal Municipal Act, 1876, and has not been withdrawn from the operation of the said Act before this Act comes into force, shall, from the time when this Act shall come into force, be deemed to be constituted a municipality under the provisions of this Act.

There are one hundred and fifty-nine municipalities constituted under this section in the Province. (See Appendix XIV, p. clxxiv)

4. All property, moveable and immoveable, and all interest of any kind whatsoever, derived under any of the enactments specified in the sixth schedule, or otherwise, and vested in, or held in trust for, the late Commissioners under the said Bengal Municipal Act, 1876, shall become vested in the Commissioners and their successors; and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

5. Notwithstanding anything contained in section 3, this Act shall not take effect in any cantonment without the consent of the Governor-General in Council previously obtained, nor shall the Local Government extend this Act, or any part thereof, to any cantonment without such consent.

All property of late Commissioners vested in Commissioners under this Act.

Act not to be extended to cantonments without consent of Governor General.

Definitions.

6. In this Act, unless there be something repugnant in the subject or context,—

(1) “Carriage” means any wheeled vehicle with springs, used for the conveyance of human beings, and ordinarily drawn by animals :

(2) “Cart” means any cart, hackery or wheeled vehicle with or without springs, ordinarily drawn by animals, and not included in the definition of “carriage :”

(3) “Holding” means land held under one title or agreement, and surrounded by one set of boundaries :

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling-house, manufactory, warehouse, or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause(a) of section 85.

Explanation.—Holdings separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso :

• Notes.

Section 85 clause (a) empowers the Commissioners to impose an alternative “tax upon persons occupying holdings within the Municipality according to their circumstances and property within the Municipality.

“Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees per annum.” Adjoining holdings under the proviso of this clause shall not therefore be deemed to be one holding for the purpose of imposing the alternative tax upon persons.

"House" (4) "House" includes any hut, shop, warehouse or building :

Notes.

Hut.—From the Administration Report of the Howrah Municipality for 1882-83, it appears that there was a suit instituted by one *Akhil Chandra Dhang* against the *Chairman* in the *Moonsif's* Court for a perpetual injunction restraining the Commissioners from carrying out improvements under Section 245 "on the ground that the structure ordered to be removed was not a hut, because it had *kutchu-pucca* walls. The case was decreed in favor of the plaintiff." In appeal the judgment of the *Moonsif* was confirmed. "Hut" does not, therefore, include a structure made of *kutchu-pucca* walls. The meaning of the word in Webster's Dictionary is "a small house, hovel or cabin; a mean lodge or dwelling; a cottage. It is particularly applied to log houses erected for troops in winter."

Building—The meaning of the word "building" in Webster's Dictionary is "a fabric or edifice constructed; a thing built." It includes a structure of any kind. "In law, anything erected by art, and fixed upon or in the soil, composed of different pieces connected together, and designed for permanent use in the position in which it is so fixed, is a building. Thus, a pole fixed in the earth is not a building, but a fence or a wall is." *Century Dictionary*.

(5) "Immoveable property" and "land" include (besides land) benefits arising out of land, houses, things attached to the earth, or permanently fastened to anything attached to the earth :

Notes.

"Immoveable property" is defined in Act X of 1897 (The General Clauses Act) to include "land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth."

(6) "Moveable property" means property other than immoveable property :

"Moveable property."

"Moveable property" is defined in the General Clauses Act to mean property of every description, except immoveable property.

"Magistrate of the District."

(7) "Magistrate of the District" means the Chief Magistrate in a District :

(8) "The Magistrate" includes the Magistrate of the District, the Magistrate in charge of a division of the District in which a municipality is constituted, and every Magistrate subordinate to the Magistrate of the District to whom the Magistrate of the District may have made over any duties under this Act:

"municipality "

(9) "municipality" means any place in which this Act, or any part thereof, is in force:

See *Appendix XIV* for the names of places in which this Act is in force.

(10) "Offensive matter" means dirt, dung, putrid or putrifying substances, and filth of any kind not included in the term sewage.

(11) "Owner" includes—

(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise ;

"Owner"

(b) a manager on behalf of any such person ;

(c) an agent for any such person ;

(d) a trustee for any such person :

Provided that no such manager, agent or trustee shall be liable to do anything required by this Act to be done by the owner, nor shall he be subject to any fine for

omitting to do such thing, unless he have sufficient funds in his hands as such manager, agent or trustee to do such thing;

Notes.

It is doubtful whether Receivers appointed by Courts come under this definition or not, cf. *W. R. Fink v. The Corporation of Calcutta*,—7 C. W. N., 200 (notes).

(12) "Part" means a Part of this Act.

(13) "Road" means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way.

Right of way.—Ordinarily a right of way is established when there is an uninterrupted actual user as of right for twenty years which must not end more than two years before the institution of a suit (*Gopee Ghand Setia v. Bhuvan Mohon Sen*, 23 W. R. 401.) But for the public to acquire a right of way no fixed period of enjoyment need be shown. It is sufficient if the acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that those acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a highway. Eight or even six years have been held time enough wherein to presume the dedication from user (*Anderson v. Juggodumba Dabi*, 6 C. L. R., 282). See also *Doraston v. Payne*, Smith's *Leading Cases* Vol. II p. 154 (9th Edition)

How acquired.—A right of way may be created either by grant express or implied, dedication or by immemorial custom or by necessity. No specific time is sufficient to establish a right of user (*Imambundee Begum v. Sheo Dyal Ram*, 14 W. R. 199.)

Under Sec. 30 all roads over which the public have a right of way (not being private property, and not being maintained by Government or at the public expense), are vested in the Commissioners. It was held under the old law that the proprietary right in the sub-soil remained with the owners of the adjoining lands. So long as the road

existed their rights remained dormant and revived at once when not used as a highway (*Nihal Chand v. Azmat Ali Khan*, I. L. R. 7 All 362; *Marhu Sudan Kunlu v. Promarla Nath Roy*, I. L. R. 20 Cal 732) But this proprietary right of the owner appears to have been affected by the insertion of the words "including the soil" after the word "roads" in para 1 of sec. 30 by sec. 21 of Act IV of 1894.

In the unreported case of *Romanath Ghosh v. F. W. Duke* (App. Ap. No. 1105 of 1900, decided on the 6th February, 1902), their Lordships (*Rampini and Pratt JJ.*) were pleased to observe that roads opened by the Commissioners under secs. 245 and 246 were vested in them under sec. 30 and that there was no clause in the Act, which, in any way limited the right of user of the municipality, in such roads.

See *Ram Chandra Ghosh v. Bully Municipality*, I. L. R. 17 Cal., 635.

(14) "rubbish" means broken brick, mortar,
"rubbish" broken glass, kitchen or stable
refuse, or refuse of any kind whatso-
ever not included in the term "offensive matter:"

All sewage, rubbish and offensive matter collected by the Commissioners from roads and other places become their property (Sec. 196)

(14A) "Sanitary Board" means the persons for the
time being appointed, either by name or by official
"Sanitary Board." designation, by the Local Govern-
ment by notification in the *Calcutta*
Gazette to constitute a Sanitary Board for Bengal :

This definition has been added by Sec. 3 of Act IV of 1894.

The insertion of this definition was necessitated by the new sections 37 A to 37M which provide for schemes of water-supply and drainage.

"schedule" (15) "schedule" means a sche-
dule annexed to this Act :

"section" (16) "section" means a section
of this Act :

"sewage" (17) "sewage" means night-
soil and other contents of privies,
drains, and cess-pools:

The contents of cess-pools have hitherto been removed under the provisions of Part V (Of Sewage, offensive matter &c), but by sec. 86 of Act IV of 1894 they have been incorporated in Part IX.

(18) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act:

The Chairman of the Commissioners has the power of acting and transacting business under all those sections where simply the word "Commissioners" is used, except under Secs. 37A to 37L, in which the word has been used in the sense of "Commissioners at a meeting." But in every case the Chairman's actions are supposed to be subject to the approval of the Commissioners at a meeting (see sections 44 and 37M.)

(19) "year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any municipality by the Local Government by notification in the *Calcutta Gazette*.

PART I.

OF THE CREATION OF MUNICIPALITIES.

7. In every place which, in accordance with the provisions of section 3, becomes a municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1875, and who is holding office as such Commissioner at the commencement of this Act, shall be deemed to be a Commissioner duly appointed for such municipality, until such time as the election or appointment of Commissioners in respect of such municipality shall take effect under the provisions of this Act.

Existing Commissioners and existing rates and taxes temporarily continued.

And in every such place in which a rate on the annual value of holdings, or a tax upon persons, or a tax upon carriages and animals, or a fee upon the registration of carts, or tolls on roads or on ferries, or a fee under Bengal Act VI of 1878, may have been levied by the Municipal Commissioners before the commencement of this Act, it shall be deemed that the said rate, tax, fee or tolls have been duly imposed under this Act, and such rate, tax, fee or tolls shall continue to be levied accordingly until the Commissioners at a meeting, with the sanction of the Local Government, shall otherwise direct.

Beng. Act V of 1878 were repealed by sec. 2 of this Act.

8. Except as is hereinafter otherwise expressly provided this Act may be extended by the Local Government by notification published in the *Calcutta Gazette*, and in the manner prescribed by section 354, to any town or village not being within the limits of the ordinary original jurisdiction of the High Court at Fort William in Bengal, from such date as may be specified in such notification; and save as is hereinafter otherwise provided, this Act shall take effect in such town or village on the date so specified, and the said town or village, within the limits mentioned in such notification, shall be deemed to be created a municipality for the purposes of this Act :

Provided that, at least six weeks before publishing any notification as aforesaid, the Local Government shall cause to be published in the town or village concerned a notice of its intention to declare the said town or village to be a municipality, unless good reason to the contrary be shown within one month

Any objections which may be made to the proposed measure shall be duly considered by the Local Government, before it causes to be issued the notification declaring the town or village to be a municipality under this Act.

Every notification declaring a town or village to be a municipality shall specify whether the name of such municipality shall, or shall not, be inserted in the first or second schedule of this Act, and shall further specify, *subject to the provisions of section 13, the number of the Commissioners of such municipality.*

Sec. 854 prescribes the manner in which the notification shall be published i.e. it shall be written in or translated into the vernacular of the district, and deposited in the office of the Commissioners and a copy shall be posted up in a conspicuous place and a public proclamation shall be made throughout the municipality by beat of drum.

The First Schedule contains the names of the municipalities in which the Commissioners are appointed by the Local Government and the Second Schedule of those in which the Chairman is appointed by the Local Government.

The Local Government may also include in one or both of these Schedules the name of a municipality which is newly created, or of a municipality under sec 66 which has been superseded by sec 65, and under sec. 23 sub sec. (4) it may remove any name from the Second Schedule.

9. The Local Government may, on the recommendation of the Commissioners at a meeting, by notification published in the *Calcutta Gazette*, and in such other manner as it may determine, declare its intention—

(a) to withdraw any municipality from the operation of this Act ; or

(b) to exclude from a municipality any local area comprised therein and defined in the notification ; or

(c) to include within a municipality any local area contiguous to the same and defined in the notification ;
or

Notification of intention
to alter limits of municipality.

(d) to sub-divide any municipality into two or more municipalities; or

(e) to alter the number of the Commissioners of a municipality :

And the Local Government may, on the recommendation of the Commissioners at a meeting of both or all the municipalities concerned, by notification similarly published, declare its intention to unite two or more municipalities so as to form one municipality :

Provided that no local area shall be included within a municipality unless the Local Government shall have been satisfied that three-fourths of the adult male population of such local area are chiefly employed in pursuits other than agriculture :

Provided also that whenever it shall appear, either from a general census or from special inquiries undertaken in this behalf, that any municipality does not comply with the conditions laid down in section 10, the Local Government may, of its own motion, declare its intention to withdraw such municipality from the provisions of this Act or to deal with it in the manner stated in this section :

Provided also that where the local area to be excluded or included is a cantonment or part of a cantonment, no notification affecting it shall be published under this section without the previous consent of the Governor-General in Council.

This and the following secs. 9A and 9B have been substituted by sec. 4 of Act IV of 1894 for sec. 9 of Beng. Act III of 1884

The Hon ble Mr. Bourdillon in presenting the Report of the Select Committee said "sections 4 and 5 of the Bill which deal with a question of considerable administrative value, viz, the conditions under which the boundaries of a local area which enjoys municipal privileges under the Act can be varied, or a municipality

be entirely removed from the operation of the Act. As the law now stands, a municipality once constituted cannot be abolished, nor can its limits be varied except upon the recommendation of the Commissioners at a meeting. *** Moreover, municipalities wax and wane, and several instances have been reported to Government of places which no longer fulfil the conditions which once entitled them to the benefit of municipal institutions. To meet such cases as these it was at one time proposed to empower the Lieutenant Governor of his own motion to withdraw any place from the operation of the Act. The suggestion was stoutly opposed, and eventually the Lieutenant Governor, in a speech delivered in this Chamber on 7th January 1893 announced his readiness to abandon the proposal as it then stood. The provisions of the Bill as now drafted have been designed to lay down a middle course. It is proposed to leave the power of the initiative as at present to the Municipal Commissioners themselves, whether for the exclusion of a municipality from the Act, or for its subdivision or expansion, but a clause has been added empowering Government to abolish a municipality or vary its boundaries only when it clearly appears that it no longer fulfils the conditions laid down by the Act, but before any action is taken in this direction, whether by Government of its own motion or upon the recommendation of the Commissioners, due notice of the intention will be given and ample opportunity afforded for the expression of local opinion" (*Cal Gaz Feb 14th 1894 Sup p 236*). The conditions referred to in the above are those laid down in sec. 10.

The Hon'ble Mr. Ghose moved to substitute the words "on the recommendation of the Commissioners at a meeting or on an application by a majority of the registered ratepayers" for the words "of its own motion" in the second proviso but the majority were opposed to this motion, which was therefore lost. (*Cal Gaz April 4th, 1894, Sup pp 474-85*.)

In opposing the motion of the Hon'ble Mr. Ghose the Hon'ble Mr. Bondillon quoted the case of the Municipality of Jajpur in Cuttack the rate payers of which petitioned the Government to relieve them from municipal taxation as they derived no benefit from it and the Government could do nothing as the proposal did not come on the recommendation of the Commissioners at a meeting. (*Ibid p 482, See also Govt Lett Appendix I, para 5*)

9A. (r) Any rate-payer of a municipality, inhabitant of a local area or, when the union of two or more municipalities has been recommended, the Commissioners of any one or more of such municipalities in respect of which a notification has been published under the last preceding section may, should he or they object to the alteration proposed, submit his or their objection in writing, through the District Magistrate to the Local Government within six weeks from the publication of

Objection to proposed alteration may be submitted to Local Government.

the notification in the *Calcutta Gazette*, and Local Government shall take such objection into consideration.

(2) When six weeks from the publication of the notification have expired and the Local Government has considered the objections (if any) which have been submitted under sub-section (1) of this section, the Local Government may, by notification, give effect to the proposed alteration or not, as the case may be.

9B. Whenever two or more municipalities are united or a municipality is subdivided, under the two last preceding sections, the Municipal Funds, or Fund, and all property vested in the Commissioners of the municipalities or municipality concerned, shall be consolidated, or apportioned in such manner as the Local Government may direct.

Local Government may apportion and dispose of municipal property upon a subdivision or union of municipalities.

10. This Act shall not be extended to any town or village, unless the Local Government shall have been satisfied that three-fourths of the adult male population of such town or village are chiefly employed in pursuits other than agricultural; and that such town or village contains a number of inhabitants not being less than three thousand, and an average number of not less than one thousand inhabitants to the square mile of the area of such town or village.

Conditions on which municipality may be created.

11, 12. [*Uniting of places with municipality. Repealed by Bengal Act IV of 1894, section 5*]

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

13. The number of Commissioners of a municipality constituted before the passing of this Act shall be such number as may be specified in a notification of the Local Government, to be issued immediately after this Act comes into force, and to be published in the *Calcutta Gazette*, or in any subsequent notification under section 9.

The number of Commissioners of each municipality created under the provisions of section 8 of this Act shall be such number as is specified in the notification of the creation of such municipality, or in any subsequent notification under section 9 :

Provided that the number of Commissioners of a municipality shall in no case be more than thirty or less than nine :

Provided, further, that no act of the Commissioners, or of their officers, shall be deemed to be invalid by reason only that the number of the Commissioners did not, at the time of the performance of such act, amount to the number specified in the notifications aforesaid.

For the number of the Commissioners of the existing municipalities
See App. XIV.

The second proviso of this section saves the acts of the Commissioners from being illegal by reason of their number specified in the notification being diminished by death, resignation, absence or otherwise.

14. Two-thirds of the number of the Commissioners

Constitution of body of Commissioners, of each municipality, fixed by such notification, shall be elected as hereinafter provided by male persons, resident within the limits of such municipality, who shall have attained the age of twenty-one years.

The remaining one-third of such Commissioners shall be appointed, either by name or by official designation, by the Local Government immediately after the result of the election hereinbefore mentioned shall have been notified to the Local Government, and such appointment shall be deemed to have been made on the date on which such election takes place :

Provided that the number of persons holding salaried offices under the Government, and appointed as Municipal Commissioners, shall not bear a larger proportion than one-fourth to the total number of Commissioners elected and appointed under the provisions of this Part :

Provided, also, that in cases where the whole number of Commissioners is not evenly divisible by three or by four the one-third or one-fourth shall be ascertained by taking the number next below the whole number, which is evenly divisible by three or by four, as the number to be divided.

Change.

The words " either by name or by official designation " have been added by sec. 6 of Beng. Act IV of 1894.

Notes.

"The object of this change" said the Hon'ble Mr. Bourdillon, "is to bring about the better despatch of business. It has been found inconvenient when officers are frequently changed in a district to gazette them by name to be Municipal Commissioners." The change was intended to secure "facility of business and administrative convenience."

This change enables the Local Government to appoint a Commissioner *ex-officio*.

Official designation.—On a question being raised as to the interpretation of this expression, the opinion of the Legal Remembrancer was sought, which was as follows:—"The words are not restricted to officers appointed or paid by Government. Nor do they extend to the holder of any office such as that of Manager of a Mill. In Wharton's *Law Lexicon* the word, official, is defined as meaning 'pertaining to a public charge' In the *Century Dictionary* the word 'official' as an adjective is no doubt defined to mean 'pertaining to office,' but as a noun it is interpreted to mean 'one who is invested with an office of a public nature; one holding a civil appointment; as a government official, a railway official' " "A person holding public office," "whether a Government servant or not" is eligible for appointment "by his official designation" under this section. "If an official, though not a Government servant, is clearly a public servant within the meaning of section 21 of the Indian Penal Code, there need be no doubt that his office is of a public nature. In this view of the question a railway officer is an official, since by sec 137 of the Railway Act (IX of 1890) every railway servant is declared to be a public servant for the purposes of Chap IX of the Indian Penal Code." [*Vide Beng. Government Municipal Circular No. 147T.—M. (Municipal dept.)—dated 24th April 1903*]

Resident.—A doubt was entertained as to whether under the powers vested in the Local Government by sec. 15 to frame rules for the purposes of elections, it has power to define the meaning of "resident," but, both the Advocate-General and the Legal Remembrancer being of opinion that it has such power, no amendment was made.

In Election Rule No. 1 cl. (d) published under Government Notification, dated the 21st November 1896, the meaning of the word "resident" has been thus defined:—

"A person shall be deemed to be resident within the limits of a municipality if he—

(1) ordinarily lives within those limits; or

(2) has his family dwelling-house within those limits, and occasionally visits it; or

(3) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

A person may be resident within the limits of more than one municipality at the same time."

If he be a qualified voter he shall be entitled to vote for the ward in which he ordinarily resides and for no other, but he shall be qualified for nomination as a candidate for any ward or wards in the municipality (*See App. X, p. xxvi.*)

The appointed Commissioners need not be residents within the limits of a municipality.

15. For the purposes of the aforesaid election of Commissioners, the Local Government, with respect to each municipality, shall lay down such rules, not inconsistent with the provisions of this Act, as it shall think fit, in respect of the division, where necessary, of each municipality into wards, and the number of Commissioners to be elected for each of such wards, the qualifications required to entitle any person to vote for a candidate for election, and in respect of the mode of election, and the authority who shall decide disputes thereunder. And the Local Government may at any time cancel any rule made by it under this section:

Provided that every male person who is at the time of such election, and has been for a period of not less than twelve months immediately preceding such election resident within the limits of a municipality, and who—

(i) has, during the year immediately preceding such election, paid in respect of any rates an aggregate amount of not less than three rupees, or

(ii) has, during the year aforesaid, paid or been assessed to the tax imposed by Act II of 1886 (*An Act for imposing a tax on income derived from sources other than agriculture*), or

(iii) being a graduate or licentiate of any University, or having passed the First Arts Examination of the Calcutta University or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a mukhtar or as a revenue agent—occupies a holding, or part of a holding, in respect of which there has been paid, during the year aforesaid, in respect of any rates, an aggregate amount of not less than three rupees,”

shall be entitled to vote at the election of Commissioners of such municipality.

No person who is not entitled to vote at the election of Commissioners of a municipality shall be deemed qualified for election to be a Commissioner of such municipality :

Provided that nothing contained in this section nor in any rules made under the authority of this Act shall be deemed to affect the jurisdiction of the Civil Courts.

“Rates” defined. The term ‘rates’ in this section means—

(a) the tax upon persons and the rate upon the annual value of holdings levied under section 85 ;

(b) the tax on carriages and horses levied under Part IV ;

(c) the water-rate on the annual value of holdings levied under Part VII

(d) the lighting rate on the annual value of buildings levied under Part VIII;

(e) the fee for the cleansing of privies and cess-pools levied under Part IX;

"Explanation.—Rules made under this section may reduce, but not raise any of the sums mentioned in the first proviso thereto, and may declare that any persons who are not referred to in that proviso shall be entitled to vote."

Changes.

The words 'and the authority who shall decide disputes thereunder' after the word 'election' in the first paragraph, the cl. (3) of the first proviso, the second proviso and the definition of the term 'rates' have been added by section 7 of Beng. Act IV of 1894. By sec. 3 (1) of Beng. Act II of 1896 clauses (i), (ii) and (iii) were substituted for clauses (1), (2) and (3) as they originally stood. In the definition of rates the word "means" was substituted for "shall be deemed to include" by sub-sec. (2) of the same sec., and by sub sec. (3) the "*Explanation*" was added.

Notes.

For the meaning of the word "resident" see notes to sec. 14, and the Election Rules, *App. X*, p. xxvi.

Jurisdiction of the Civil Courts.—A suit for the declaration of a person's right to vote and stand as a candidate at an election as also for declaration that he was duly elected is a suit of a civil nature; and such a suit lies in the Civil Court under Sec. 11 of the Civil Procedure Code. Such a suit also lies in view of Sec. 42 of the Specific Relief Act, the words "legal character" in that section being wide enough to include the right of franchise and also the right of being elected as a Municipal Commissioner. The Magistrate is not a necessary party in such a suit—*Subhapat Singh v. Abdul Gaffur*, I. L. R. 24 Cal., 107.

A like suit, based on the ground that the persons, who constituted the authority for revising the list of voters and candidates, had wrongfully struck off the list the name of the plaintiff, if maintainable at all, was held to lie not against the municipal corporation, but against the revising authority personally.—*Abdur Rahim v. The Municipal Board of Kul*, I. L. R. 22 All, 143.

For the meaning of word "year" in cl. 1 of the first proviso see sec. 6 cl. (19). The payment of the qualifying minimum tax, within the official year in which the election is held, does not qualify a person to vote, but the period of residence for twelve months need only be completed immediately before the election.

16. The first election of Commissioners under this Act may take place at such time, not being more than six months after this Act comes into force, as the Local Government shall direct.

If the persons entitled to elect Commissioners for any municipality fail within the time appointed for the first election under this Act, or for every subsequent election within the time prescribed by the rules mentioned in the last preceding section, to elect the whole number of Commissioners allotted for election to such municipality, the Local Government may appoint one or more Commissioners to complete the number so allotted as aforesaid.

17. Every municipality mentioned in the first schedule of this Act shall be excluded from the operation of the three last preceding sections, and in any municipality so excluded, the whole number of the Commissioners shall be appointed by the Local Government either by name or by official designation ; subject, however, to the proviso contained in the third clause of section 14.

It shall be lawful for the Local Government at any time to remove the name of any municipality from the said schedule.

Change.

The words "either by name or by official designation" have been added by sec. 8 of Beng. Act IV of 1894.

Notes.

The first schedule contains the names of the municipalities in which the Commissioners are declared to be appointed by the Local Government under sec. 8. The Local Government may also under sec. 66 include the name of a municipality, in this schedule, which has been superseded under sec. 65

For the meaning of the expression "official designation," see notes to sec. 14.

18. [*Resignation of Commissioners.*] Repealed by sec. 9 of Beng. Act IV of 1894.

This section has been incorporated in sec. 27A which provides for the resignation of the Chairman, Vice Chairman and Commissioners.

19. The Local Government may, if it thinks fit, on the recommendation of the Commissioners at a meeting, remove any Commissioner appointed or elected under this Act, if such Commissioner shall have been guilty of misconduct in the discharge of his duties or of any disgraceful conduct.

Removal of Commissioner by Local Government.

Notes.

In the Madras Municipal Act III of 1871, there is a provision in sec. 9 that the Governor in Council may remove a Commissioner for misconduct or neglect of duty.

The principle of the ruling in *Queen v. Smith*, 5 Q. B. 623, that an incumbent, having in the contemplation of law a free-hold in his office, could not be legally removed without some sort of inquiry and proof, was held to be applicable to the case of the removal of a Commissioner, and a suit for damages was held to be maintainable if removed without sufficient cause as contemplated by law.—*Vijaya Ragava v. The Secretary of State*, I. L. R. 7 Mad., 466.

As to the eligibility for re-election of such a Commissioner see sec. 22.

This section, in the opinion of the Local Government 'was not intended to enable the Municipal Commissioners to get rid of an

unpopular colleague, but to allow the Lieutenant-Governor to remove the scandal which would be caused by the continuance on a Municipal Board of a member known to have been guilty of misconduct in the performance of his duty or of disgraceful conduct of other kind.' (See Municipal Department, Letter No. 418, dated the 26th January 1896 to the address of the Commissioner of the Burdwan Division ~~in~~ re the removal of a member of the Howrah Municipality).

Removal of Commissioner by Commissioner of the Division.

20. (1) The Commissioner of the Division may remove any Commissioner—

- (a) if he refuses to act or becomes incapable of acting, or is declared insolvent, or is convicted of any non-bailable offence ; or
- (b) if he has been declared by notification to be disqualified for employment in the public service ; or
- (c) if he absents himself from six consecutive meetings of the Commissioners without having obtained permission from the Commissioners at a meeting ; or
- (d) if, in the judgment of the Commissioner of the Division to be recorded in writing, he has become disqualified to continue in office under section 57: „

Provided that any Commissioner so removed may appeal to the Local Government.

(2) All acts and proceedings of any Commissioner so removed shall, if done previously to such removal, be valid and effectual to all intents and purposes.

This section has been substituted by sec. 10 of Beng. Act. IV of 1894.

Notes.

The report of the Select Committee on this section was not unanimous. It has been re-modelled on the lines of section 18 of

Bengal Act III of 1885 (*The Local Self-Government Act*), but in that Act the power of removing a member of the District or Local Board has been vested in the Local Government. Objection was taken to the delegation of the power under this section to the Divisional Commissioner. It was said in answer that secs. 20 and 57 of Act III of 1884 only prescribed the disqualifications which would *ipso facto* render a Commissioner to forfeit his office, but there were varying opinions as to the authority that would make a declaration to that effect. The Hon'ble Mr. Bourdillon said "in the opinion of the framers of this Bill, it is desirable that this doubt should be set at rest, and they have therefore redrafted the provisions of the section, and, as some person must make the declaratory order, they have nominated for that purpose the Commissioner of the Division, who, knowing all the facts of the case and being upon the spot, is the person who should make the necessary declaration." The Hon'ble Sir Charles Paul said "I must say that this section provides for a disqualification *ipso facto*. From the time that it is known that a Commissioner or Member of a Ward Committee is directly or indirectly interested in a contract, from that moment he ceases to be a Commissioner and is disqualified. What is now proposed is, to make provision for notifying such disqualification. If you do not do so you will have to bring a suit for an injunction or a prosecution from time to time, and fine such Municipal Commissioner for every time he votes as a Commissioner. That is what is done in England, and in as much as there is no provision for removal here, it is necessary to have a provision, and I think the provision now proposed is a proper one. The distinction between the Local Government and the Commissioner of the Division seems to be a very fine distinction. When the Local Government is called upon to look at these things, it does not look upon them through its own spectacles, it sees through the eyes of its District Officers. The object of the section is merely to make provision for what there is no provision now."

The provision of the cl. (a), "refuses to act or becomes incapable of acting" has been taken from the Punjab Municipal Act. It was considered to be superfluous in as much as such a Commissioner shall be disqualified under cl. (c) by efflux of time, but this objection was overruled.

Clause (b) was added with a view, the Hon'ble Mr. Bourdillon said "to make the position of a Municipal Commissioner one of dignity, and one which shall carry with it privileges and duties of a high character."

Cl. (c) — By this clause leave may be granted to a Commissioner, but it does not fix the period for which such leave may be granted as in the case of leave to a Chairman or a Vice-Chairman under sec 26B. This omission may be supplied by a rule being framed under sec. 351A.

An adjourned meeting convened merely to consider the undisposed of items of business of a previous meeting cannot be considered as a separate substantive meeting but a continuation of the previous one, and as such, the two together form one meeting (*Goroo Prosad Sen v. C. J. S. Faulder and another*, suit No. 92 of 1899 in the Court of the Third Sub-Judge at Bankipore 11th April 1899, see *The Behar Herald and the Indian Chronicle*, 19th April 1899)

Cl. (d).—Sec 57 disqualifies a Commissioner from continuing in office by reason of his having an interest in any contract with the municipality of which he is a member or holding any office of profit under it.

Sub-sec. (2) has been taken from the *English Public Health Act 1875*, sec 70.

A Commissioner removed under cls (c) and (d) may be elected or re-elected, but one removed under cls (a) and (b) may not, without the sanction of the Local Government (*sec. 22 post*)

21. Every Commissioner shall vacate his office at the end of three years from the date of his appointment or election as such Commissioner.

Three years —The period of "three years" includes any period which may intervene between the expiration of the three years and the date of the first meeting of the new Board (*Sec. 26 post*)

22. No Commissioner who has been removed from his office by the Local Government under section 19, or by the Commissioner of the Division under clauses

Tenure of office of Commissioner.
Certain Commissioners not to be elected or re-elected without consent of Local Government.

(a) and (b) of sub-section (1) of section 20, may be elected or re-elected a Commissioner without the consent of the Local Government.

This section has been substituted by sec 11 of Beng Act IV of 1894

It provides for election or re-election in those cases only in which Commissioners are removed for disqualifications of a graver nature. No such provision was perhaps thought necessary for those cases in which they retire by resignation or are removed under cls. (c) and (d) of sec. 20.

23. (1) The Local Government shall appoint, either by name or by official designation, the Chairman of every municipality mentioned in the second schedule of this Act.

Appointment of Chair
man.

(2) The Commissioners of every municipality, the name of which is not included in the said schedule, shall, at a meeting, elect one of their number to be Chairman, or may, whenever a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman, and such Chairman shall be appointed by name.

(3) The Local Government may at any time remove a Chairman appointed by it.

(4) The Local Government may at any time remove the name of any municipality from the said schedule.

(5) Whenever the name of any municipality is removed from the said schedule, the office of Chairman shall thereupon become vacant.

Changes

This section has been substituted by sec 12 of Beng Act IV of 1894.

The words "either by name or by official designation" in sub sec. (1) and "and such Chairman shall be appointed by name" in sub sec (2) are new, as well as sub-sec. (5).

Notes

The second schedule contains the names of those municipalities in which the Chairman is appointed by the Local Government.

By the words added in sub-sec. (1) an *ex-officio* Chairman may be appointed. The election of a Chairman under sub-sec. (2) shall be subject to the approval of the Local Government [sec 59 cl. (a).] The Commissioners by requesting the Local Government to appoint a Chairman do not permanently surrender their right of election (see *App. I, Govt. Lett. para. 9*). By sub-sec. (3) an appointed Chairman may be removed by the Local Government, but an elected Chairman by a resolution of the Commissioners passed at a special meeting at which not less than two-thirds of the whole number of Commissioners have given their votes (sec. 24 cl. 3.) Sub-sec. (4) gives power to the Local Government to remove the name of a municipality from the second schedule and the Chairman of such municipality may be elected, but except under sec. 66 no name can be entered therein.

For the meaning of the expression "official designation" see notes to sec. 14.

24. Notwithstanding anything in section 13 contained, every Chairman appointed under the last preceding section, if not already a Commissioner of the municipality of which he shall have been appointed Chairman, shall, from the date of his appointment, during the term of his office enjoy all the rights and privileges of a Commissioner of the municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-third and one-fourth under the provisions of section 14.

Except as is otherwise provided in this Act, every Chairman, whether appointed or elected, shall hold office for three years from the date of his appointment or election, and shall be eligible for re-appointment or re-election

A Chairman elected under the last preceding section may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.

Change.

The words 'except as is otherwise provided in this Act' have been added by sec. 13 of Beng. Act IV of 1894.

Notes.

For an interpretation of the term 'three years' in this section see secs. 26 and 26A.

A resolution under paragraph 3 requires confirmation by the Local Government under sec. 59 cl. (b).

25. The Commissioners at a meeting shall elect one of their own number to be Vice-Chairman. He shall hold office for three years from the date of his election, and shall be eligible for re-election on the expiration of his term of office.

Election of Vice Chairman.

The Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners shall have given their votes at a meeting specially convened for the purpose.

Notes.

Three years.—The period of "three years" includes any period which may intervene between the expiration of the three years and the date of the first meeting of the new Board (secs. 26 and 26A post).

In the Draft Bill it was proposed to make the election of the Vice-Chairman subject to the approval of the Local Government, but the proposal was finally abandoned.

25A. If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be.

Ex-officio appointment.

This section has been added by sec. 44 of Beng. Act IV of 1894.

26. The term of three years mentioned in sections 21, 24 and 25 shall be held to include any period which may elapse between the expiration of the said three years and the date of the first meeting of the body of Commissioners newly appointed and elected, at which a quorum shall be present, and any Chairman elected under sections 23 or 27 shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election.

Tenure of office under sections 21, 24 and 25.

Change.

The words from 'first' to 'election' have been substituted by sec. 15 of Beng. Act IV of 1894 for the words 'next subsequent appointment or election, not being an appointment or election under the next succeeding section.'

Notes.

These new words distinctly fix the period of the tenure of office of the Commissioners, Chairman and Vice-Chairman to the date of the first meeting of the new body. A Commissioner's tenure of office under the Act was hitherto terminable on the date of election or appointment, and as appointment of Commissioners was generally made some time after the election, there was virtually an interregnum, which, in several cases, caused great inconvenience in the despatch of business. This change has removed that inconvenience, and the outgoing Commissioners continue in office till their successors actually undertake the administration. In the same way the out-going Chairman or Vice-Chairman remains in office till the first meeting of the new body. The Chairman who is then elected takes charge

of his office pending approval of the Local Government, which he could not do under the old section, the Vice-Chairman, as before, taking charge immediately after his election, which does not require the approval of the Local Government. (*See App. I, Govt. Lett. para. 10*)

26A. Notwithstanding anything contained in sections 24, 25 and 27 A, the Chairman and Vice-Chairman of every municipality shall resign office at the first meeting of the Commissioners newly appointed and elected at which a quorum shall be present. The meeting shall thereupon proceed—

Resignation of Chairman and Vice-Chairman.

(a) to elect, or to request the Local Government to appoint, a Chairman, and

(b) to elect a Vice-Chairman :

Provided that if the municipality is in the second schedule of this Act, or if the meeting decides to request the Local Government to appoint a Chairman, the resignation of the Chairman shall not take effect until a new Chairman is appointed.

This section has been added by sec. 16 of Beng. Act IV of 1894.

Notes.

The Hon'ble Mr. Bourdillon said "sometimes considerable delay occurs in the election of a Vice-Chairman or in the appointment or election of a Chairman for a new body of Commissioners. As the ordinary official life of a Municipal Commissioner, a Vice-Chairman, or a Chairman is three years, the result is that the Commissioners at the end of their term go out of office some weeks, or sometimes months before their Chairman and Vice-Chairman. In these circumstances, the old Chairman and Vice-Chairman continue to preside over a body of Commissioners who did not elect or nominate them. The Hon'ble the Advocate-General has given his opinion that such a state of things is quite legal, but it is obvious that the position may often be trying, and especially will this be the case when—as may easily

happen—the old Chairman and Vice-Chairman may not be included in the new body of Commissioners” The object of the insertion of this section is to remove this difficulty.

The proviso covers the case of the municipalities in which the Chairman is appointed.

Another difficulty was pointed out at the debate on this section as to what was to be done in the event of their being a tie at the meeting and it was asked who was to preside at this meeting, whether the president should have a casting vote and whether a candidate would be entitled to vote for himself. “These are matters which,” the Hon’ble Mr. Bourdillon said, “in the opinion of Government, need not be dealt with by legal enactment. Under section 90 of the present Bill (sec. 351A of Act), it is proposed to give to municipalities power to make rules, among other things for the conduct of business ; these rules require the sanction of the Local Government, and when they are prepared, opportunity will be taken to lay down definite and uniform rules on these and other points on which doubt still prevails.” If the Local Government is requested to appoint a Chairman the quorum required is two-thirds of the Commissioners [sec. 23 cl. (2)].

26B. The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

Leave may be granted to Chairman or Vice-Chairman.

This section has been added by sec. 17 of Beng. Act IV of 1894. It supplies an omission.

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, or shall avail himself of leave granted under section 26B, the vacancy caused by his resignation, or removal, death or absence on leave shall be filled by the appointment or election, as the case may be, of another person ; and the person so appointed

Appointment or election of Commissioner, Chairman or Vice-Chairman for unexpired term of office or during term of leave of absence,

or elected shall fill such vacancy for the unexpired remainder of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office or during his absence on leave, as the case may be.

Changes.

The words 'or shall avail himself of leave granted under section 26 B' 'or absence on leave' and 'or during his absence on leave, as the case may be' have been added by sec. 18 of Beng. Act. IV of 1894.

Notes.

The Chairman and Vice-Chairman may avail of leave under sec. 26B and a Commissioner under sec. 20, cl. (c) of sub-sec. (1) may absent himself from five consecutive meetings without leave, but if it exceeds, he will have to obtain permission from the Commissioners at a meeting.

This section contemplates absence on leave granted under sec. 26 B to a Chairman or a Vice-Chairman and not to a Commissioner. It is therefore obligatory to fill up the vacancy caused by the officer going on leave. There is, however, no provision in the law in the case of a Commissioner.

The election of a Chairman under this section is subject to the approval of the Local Government. [sec. 59 cl. (a)].

27A. (1) A Chairman of a municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted, shall be deemed to have vacated his office.

Resignation of Chairman, Vice-Chairman or Commissioner.

(2) A Vice-Chairman or a Commissioner of a municipality may resign by notifying in writing his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting, and on such resignation being accepted by such Commissioners, shall be deemed to have vacated his office.

Changes.

This section is new and has been added by sec. 19 of Beng. Act IV of 1894. Section 18 of the Act under which a Commissioner might resign has been repealed by sec. 9 of Act IV of 1894.

28. The Chairman and Vice-Chairman of any municipality may, if the Commissioners think fit, receive such allowances out of the Municipal Fund as shall from time to time be fixed at a meeting by the Commissioners.

Allowances of Chairman and Vice Chairman.

And in the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time determine at a meeting:

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office.

Change.

Paragraphs 2 and 3 have been added by sec. 20 of Beng. Act IV of 1894.

Note.

A resolution under this section requires confirmation of the Local Government under sec. 59 cl (c).

29. The Commissioners shall, in the name of their Chairman, by the description of "The Chairman of the Municipal Commissioners of _____," be a body corporate, and have perpetual succession, and a common seal, and in such name shall sue and be sued.

Incorporation of Commissioners.

Such common seal shall have the name of the Municipality engraved thereon in legible characters in the English language, and also in the vernacular of the district.

Jurisdiction of Courts.

English Law.—The jurisdiction of a legal tribunal to interfere with the exercise by a corporation of powers, which are beyond the scope of its authority, is usually discussed in the English Law under the head of *ultra vires*. Under the English Law a municipal corporation is an ordinary corporation, whose powers and duties are defined by the statute which brings it into existence and by statutes of general application. A few instances may be considered here —

(1) **Municipal Fund.**—When the statute defines the purposes towards which the corporate funds may be applied, an injunction may be granted against the application of the fund to any other purpose [See *Attorney-General v. Aspinall*, 2 My. & Cr, p 613 and *Attorney-General v Mayor of Poole*, 4 My. & Cr, p 17. Cf. sec 69 of this Act and the notes thereunder]

(2) **Alienation.**—Courts have jurisdiction to prevent alienation except on certain defined conditions [See *Arnold v. Mayor of Gravesend*, 25 L. J. Ch, p. 776. Cf sec 34 of this Act and the note there-under].

(3) **Bye-laws.**—Courts have also assumed jurisdiction to declare whether a bye-law or rule framed by a municipal corporation is *ultra vires* [See. Brice on *Ultra Vires*, p. 195, 3rd edition. Cf. sec 35 of this Act and the notes thereunder].

(4) **Corporate discretion.**—As the powers of a corporation are usually defined by statutes, questions often arise as to the precise extent of such powers contemplated by law, involving an examination of the words employed, capable of different interpretations. When, however, no doubt exists as to the powers, general and special, with which a corporation is endowed, the court will not interfere with its operations when it is both “keeping within its authorization and acting *bona fide*. It will be deemed the best judge not only of what is most conducive to its own interests, but also of what is proper and fitting as regards third parties.” and it will be unchecked to take whatever action it deems proper [See the authorities cited in Brice on *ultra vires*, p 475 (3rd edition) These principles apply with greater force to public corporations which are allowed a greater

latitude in the exercise of their powers than other privileged corporations [See *Galloway v. Mayor of London*, L. R., 1 H. L., p. 34 and *Quinton v. Corporation of Bristol*, 17 Eq., p. 524]. The only exception is when private rights are interfered with, e.g., by an act of nuisance, which is illegal and amounts to an invasion of private rights, although the corporation may act with perfect *bona fides* for the public benefit [See *Attorney-General v. Mayor of Kingston* 13 W. R., p. 888].

Indian case law.—Municipal as well as other public boards are included within the restraining and regulating jurisdiction of Civil Courts of the country, which are competent to inquire into and control the action of such bodies when they have acted in excess or contravention of the powers conferred upon them.—*Brindaban Chunder Roy v. Municipal Commissioners of Serampore*, 19 W. R. 309. So where it appeared that the Municipal Commissioners of Gantur had conformed to the procedure laid down in law for the imposition of the profession tax on a person, it was held by the High Court on reference that suit to obtain a refund of the tax levied in the case would not lie in the Civil Courts.—*Kamayya v. Leman*, I. L. R., 2 Mad., 37. But there is nothing in the Bengal Municipal Act to prevent a rate payer from seeking a decision in a Civil Court that the assessment made by a municipality is *ultra vires* and not binding upon him.—*Navadip Chandra Pal v. Purnanand Shaha*, 3 C. W. N. 73. So where an assessment of the tax on persons under sec. 85 cl. (a) was made in consideration of the assessee's circumstances and property (wholly or partly) outside the local limits of the municipality, it was held that the action of the Commissioners was *ultra vires* and liable to be set aside by the Civil Courts, *Kameshwar Pershad v. Chairman of the Bhabua Municipality*, I. L. R., 27 Calc., 849. But a Civil Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing house tax, but is bound to accept it as conclusive.—*Morar v. Borsad Town Municipality*, I. L. R., 24 Bom., 607. See also *Municipality of Wai v. Krisnaji Gangadhar*, I. L. R., 23 Bom., 446.

Thus the result of all these decisions in India also is that the jurisdiction of the Civil Courts is limited to the determination of the question as to whether the act complained of was *ultra vires*, i.e., not

within the scope of the authority vested by the law in the municipality. It is not open to the Civil Courts to go into the question of the propriety or necessity of the act complained of, when the legislature has designedly made the corporation the sole judge of such propriety or necessity. The matter would, of course, assume a different aspect, if the *bona fides* of the act itself is questioned or malice imputed to the local authority.—*Duke v. Rameswar Mathiah*, I. L. R., 26 Cal. 811. It is not the practice of the Court to interfere with corporate bodies "unless they are manifestly abusing their powers".—*Ahmedabad Municipality v. Manilal*, I.L.R., 19 Bom., 212 and *Bhawanishunkar v. The Surat Municipality*, I. L. R. 21 Bom., 187 (191, 14 & 195). Even in a case where a Civil Court ordinarily has jurisdiction to interfere on the ground that the local authority has acted *ultra vires*, the jurisdiction may be withdrawn by express legislation; e.g. as regards the amount of assessment made by the Commissioners under the act. It was accordingly held that even if the Commissioners, fixing the assessment, had taken into consideration the means of the owner without confining their attention to the annual value of the holding, they might have acted improperly and exceeded their powers under the act, but the Civil Court had no jurisdiction 'to question the assessment in view of the special provision in the municipal law contained' in the old Act corresponding to sec. 116 of this Act.—*Maneswar Das v. The Collector and Municipal Commissioners of Chupru*, I L. R., 1 Calc. 409.

The Municipal Commissioners are authorised to acquire lands for carrying out the purposes of the law. They are the sole judges of the necessity of such acquisition and no suit lies to restrain them from making the acquisition.—*Shastri Ram Chandra v. The Ahmedabad Municipality*, I. L. R. 24 Bom., 600.

A corporation is liable under the Penal Code to be prosecuted for a nuisance in the same way as if the offence had been committed by an ordinary individual. Sanction of the Local Government is not necessary for such a prosecution.—*Empress v The Corporation of the Town of Calcutta* I.L.R. 3 Cal. 758. See also *Chairman of the Serampore Municipality v. Inspector of Factories, Hooghly*, I. L. R., 25 Cal. 454.

29A. (1) The powers and functions of the Local Government under sections 30, 255, 259 and 331, may be delegated by the Local Government to Commissioners of Divisions.

Delegation of certain powers and functions of Local Government.

(2) In regard to powers or functions delegated to them under this section, Commissioners of Divisions shall have the same authority as the Local Government, and the delegation shall continue until revoked by the Local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid, and may be made generally in regard to all the municipalities within the Division of the Commissioner, or it may be made particularly in regard to certain municipalities only.

(4) The delegation may be by name or by official designation, and shall in each case be notified in the *Calcutta Gazette*.

Change.

This section is new and has been added by sec. 21 of Beng. Act IV of 1894.

Notes.

By this section certain powers hitherto exercised by the Local Government may be transferred to the Commissioners of Divisions with a view to secure despatch of business.

Sec. 30 para 2 empowers the Local Government to exclude any road, bridge or drain from the operation of this Act or of any specified section.

Sec. 255 provides that no burial or burning ground shall be made or shall be again used, if once lapsed into disuse, without the permission of the Commissioners or of the Local Government.

By sec. 259 the Commissioners at a meeting may, with the sanction of the Local Government, provide out of the Municipal Fund fitting places to be used as burial or burning grounds, and may impose a fee for burying or burning.

By sec 331 para. 3 the Commissioners with the approval of the Local Government may make, alter, add to or repeal rules for defining the duties of persons employed in the removal of sewage.

Of the property of the Commissioners.

30. All roads, including the soil and all bridges, tanks, ghats, wells, channels and drains in any Municipality (not being private property, and not being maintained by Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners.

Public roads &c vest
ed in the Commissioners.

But the Local Government may, from time to time, by notification, exclude any road, bridge or drain from the operation of this Act, or of any specified section of this Act and may cancel such notification wholly or in part

Provided that, if the cost of the construction of the work shall have been paid from the Municipal Fund, such work shall not be excluded from the operation of this Act or of any specified section of this Act without the consent of the Commissioners at a meeting.

Change.

The words 'including the soil and all' and 'or of any specified section of this Act' have been added by sec. 22 of Beng. Act IV of 1894.

Notes.

Read.—The word 'road' has been defined to be a passage over which the public have a right of way (*sec. 6 cl. 13*).

The insertion of the words 'including the soil' appears to have materially affected the rights of the owners of the adjoining lands in

the soil, which by a recent ruling of the Calcutta High Court (*Modhu Suddam Kundu v. Promoda Nath Rai*, I. L. R., 20 Cal., 732) was held to belong to them, and it was pointed out that the Commissioners were not vested with the absolute proprietary right in the soil, following the principle laid down in the case of the *Chairman of the Nashati Municipality v. Kissori Lall Gossami*, I. L. R. 13 Cal. 471. It appears that if the road is closed the soil will now continue to belong to the Commissioners.—See *Govt. Lett. para. 12 (Appendix I.)*

In order to take a road &c., out of the hands of the Commissioners two things must be proved—(1) that it is a private property and (2), that it is not maintained by Government or at the public expense. Whether a road vests in the Commissioners or is private property is a question of fact to be decided on evidence. It appears that a road may be private property, although the public may have a right of way over it.

A road once vested in the Commissioners cannot be closed, or diverted or otherwise disposed of without the sanction of the Local Government.—*Jadu Nath Ghose v. Brojo Nath De*, I. L. R., 2 Cal. 425.

There is nothing preventing roads constructed by the Commissioners under sec. 245 and used by Municipal servants for conservancy purposes from vesting in the Commissioners under this section; nor are the purposes for which such a road may be used confined to cleaning the particular *busti* which it opens out—*Roma Nath Ghose v. F. W. Duke* (Appl. Ap. No 1105 of 1900, decided 6-2-02 unreported).

Under sec. 190 all drains shall be subject to the inspection, and control of the Commissioners, and as such no person can interfere with any of them without their consent, even though they are private.

Sec. 191 provides for inspection of house drains by the Commissioners or officers authorized by them after six hours' notice in writing to the occupier between sun-rise and sun-set, and, if necessary, they may cause the ground to be opened for preventing or removing any nuisance arising therefrom, and the expenses, incurred thereby, shall be paid by the owner or occupier.

31. The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, ghat, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare, by notice in writing put up thereon or near thereto, that such road, bridge, tank, ghat, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein, or the control thereof (as the case may be), shall vest in the Commissioners, and such road, bridge, tank, ghat, well, channel or drain shall thenceforth be repaired and maintained out of the Municipal Fund.

Notes.

It will be noticed that the expression, "including the soil" added to the word "roads" in the preceding section has not been incorporated in this section. Does it follow, therefore, that the proprietary right in the road, &c., transferred, remains in abeyance, to revert to the owner, if it is closed? See *Nehal Chand v. Azmat Ali Khan*, I L R, 7 All., 362. The point, if it arises in any case, may, perhaps, have to be decided with reference to the terms of the transfer.

32. Every hospital, dispensary, school, rest-house, ghat and market, not being private property, or the property of a religious institution or society, and all medicines, furniture, and other articles appurtenant thereto, not being such property, which at and after the commencement of this Act shall be found within any municipality, may, by order of the Local Government duly published on the spot, be vested in the Commissioners of such municipality; and thereupon all endowments or funds belonging thereto shall

Existing hospitals, schools, rest houses, &c., may be vested in the Commissioners.

be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer :

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the *Calcutta Gazette* and within the municipality in the vernacular language of the district.

33. If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-house, ghat or market, on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept

Transfer to be conditional in certain cases.

34. The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, let, exchange or otherwise dispose of any land not required for such purposes.

Power to purchase, lease, and sell lands.

Notes.

An exercise of the powers, given by this section to the Commissioners does not debar the Civil Courts from entertaining suits and giving relief in respect of any civil right which may be shown to have been infringed thereby.—*Fazal Haq v. Maha Chand*, I. L. R., 1 All., 557. See also notes to sec. 29.

35. The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being

Land may be taken up under Land Acquisition Act, 1894.

satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify under the provisions of the Land Acquisition Act, 1894, or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired under the provisions of such Act, and, on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

For the purposes of this Act—The Commissioners are authorised to acquire lands for carrying out the purposes of the law. They are the sole judges of the necessity of such acquisition and no suit lies to restrain them from making such acquisition.—*Shastri Ram Chandra v. The Ahmedabad Municipality*, I. L. R., 24 Bom., 600.

36. The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of the last preceding section.

Commissioners to pay
cost of such land.

Notes.

By sec. 50, sub-sec. 1 of India Act I of 1894 (*The Land Acquisition Act*) the charges of and incidental to the acquisition of any land at the cost of any fund under the control or management of a local authority shall be defrayed from such fund.

By sub-sec 2, the local authority concerned may appear before a Collector or Court in any proceeding in which it is concerned and adduce evidence for the purpose of determining the amount of compensation but it shall not be entitled to demand a reference to a Court under sec. 18.

37. The Commissioners may enter into and perform

Execution of contracts. any contract necessary for the purposes of this Act.

Every contract made on behalf of the Commissioners of a municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

Unless so executed, such contract shall not be binding on the Commissioners.

Notes.

Necessary for the purposes of this Act—This section authorizes the Commissioners to enter into contracts *necessary for the purposes of this Act*.—Any other contract is *ultra vires*. See secs. 14 and 69 and the notes thereunder.

Contract exceeding five hundred rupees—In the unreported case of *Gorind Chandra Dutt v Chairman of the Howrah Municipality*, it was held (*per* Macpherson & Beverly, JJ) that the provisions of secs. 65 and 70 of the Contract Act do not apply to the case of a contract in respect of a sum exceeding five hundred rupees, not entered into in accordance with the provisions of this section, even though the Commissioners may have been benefited thereby.—*Special Appeal No 1828 of 1891, decided on the 5th June, 1894.*

37A. The Commissioners of any municipality may join with the Commissioners of any other one or more municipalities, or with any district board or with any cantonment authority, or with more than one such board or cantonment authority, in constituting out of their respective bodies a joint-committee consisting of

Formation of Joint Committees

not more than two members from each of such bodies for any purpose in which they are jointly interested, and in delegating to any such joint-committee any power which might be exercised by either or any of the municipal bodies, or district boards, or cantonment authorities concerned, and such joint-committee may from time to time frame rules as to the proceedings of any such joint-committee, and as to the conduct of correspondence relating to the purpose for which such joint-committee is constituted.

Changes.

This and the next following sections 37B, 37C, 37D, 37E, 37F, 37G, 37H 37I, 37J, 37K, 37L and 37M are new and have been added by sec. 23 of Beng. Act IV of 1894,

This section has been redrafted on the model of sec 30 of Bengal Act III of 1885 (*The Local Self Government Act*) and sec. 27 of Act XX of 1891 (*The Punjab Municipal Act*).

Note.

The word 'Commissioners' in this and the eleven subsequent sections means 'Commissioners at a meeting' and not the Chairman as in all other sections where the word occurs in the Act (*secs 37M and 44 post*) See *Govt. Lett, para. 13, Appendix I.*

37B. Whenever it appears expedient to the Commissioners of any municipality, or to the Commissioners of a municipality acting conjointly with the Commissioners of any other municipality or municipalities, or with one or more of any of the local authorities specified in the last preceding section, to provide a supply of water for domestic purposes, or to introduce a system of drainage, they may cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose, together with such plans and specifications of the same as may be necessary, and may

Voluntary introduction of a water supply or system of drainage.