

even where there is no improper exercising or breach of the statutory powers. In the case of *Moran v. Chairman of Motihari Municipality*, (I. L. R., 17 Cal., 329) the Subordinate Judge found that the Commissioners in refusing licenses had acted legally and in proper exercise of their powers, and also found that the plaintiffs had suffered loss of income from their market in consequence of such refusal, and was of opinion that the refusal of the license was an act done in the exercise of powers conferred by the Act within the meaning of sec 362, and that under secs. 362 and 363 the court could award compensation. The High Court (Pigot and Rampini JJ.) was pleased to observe "we must be satisfied that it was the duty of the Municipality under the provisions of the Act to issue the license which they refused: for breach of such a duty they might perhaps be liable in damages. **The Municipality was legally entitled to refuse the renewal of the license. ..It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside".

A corporation, having a statutory obligation imposed upon them to repair and maintain the roads, were liable for a breach of their duty; so that where there is a dangerous obstruction, *a fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners they are to be held liable for damage caused by it. The fact that the Commissioners gave permission to another person to open up the road, although for a perfectly proper purpose, would not relieve them from their statutory duty.—*Corporation of Calcutta v. Anderson*, I. L. R. 10 Cal. 445.

The Commissioners are liable for the act of their contractor, and where the work is necessarily attended with risk, they cannot free themselves from their liability by employing a contractor.—*Dhondiba Krishanaji v. The Municipal Commissioners of Bombay*, I. L. R. 17 Bom. 507.

In the case of *Ullman v. The Justices of the Peace for the Town of Calcutta*, (8. B. L. R. 263), it was, however, held that if a person has to do a lawful act, and he employs a competent person to do that lawful act, and damage occurs, the original employer is not liable. In the Bombay case just cited, it was pointed out that the law has since been modified by English decisions. See *Dalton, v. Angus* 6 Ap. Cas., 740.

In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held by the High Court (*per* Henderson J.) that the Corporation having granted, after due inquiry, sanction to erect a building, is not entitled, in an action for damages caused by the withdrawal of the sanction, to plead in defence that its officer made a mistake, and that the sanction was not binding.—*Tullaram v. The Corporation of Calcutta*, I. L. R., 30 Cal. 317.

Whether a suit for damages for malicious prosecution lies against a Corporation is a question not free from doubt. "In *Edwards v. Mid. R. Co.* (6 Q. B. D. 987) it was held by Fry J. that a Corporation was capable of malice. On the other hand, in *Abrath v. N. E. R. Co.* (11 App. Cas. 247), Lord Bramwell strongly supported the opposite view, but this was only a dictum, and not necessary to the determination of the case".—*Underhill on Torts*, p. 145.

353. No suit shall be brought against the Commissioners of any municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners, and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit ;

and unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If the Commissioners or their officer, or any person to whom any such notice is given, shall before suit is brought tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Anything done under the Act.—See notes to section 29—“Jurisdiction of Courts”.

Damages.—In the case of *Chundra Sikar Banerji v. Abhoy Churn Bagchi*, (I L. R. 6 Cal, 8, F B) Garth, c. J. held “that section, as it seems to us, is applicable only in those cases where the plaintiff claims damages for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise of their statutory powers”. See also *Bhoirab Chundra Banerji v. Makgill*, 17 W. R. 215. In the case of *Moti Lal Bose v. The Howrah Municipality*, 23 W. R. 222, the defendant corporation had prosecuted the plaintiff for allowing a piece of land to be covered with jungle and night-soil, and had procured the infliction on him of a fine which they realized by the attachment and sale of his moveable property. The plaintiff brought the suit for the value of the goods and for damages. It was held that the suit could not be maintainable. The Municipal Commissioners are liable to be sued for damages for any breach of their statutory duty which results in injury. See *The Corporation of the Town of Calcutta v. Anderson*, I. L. R 10 Cal. 445. The words “any thing done” in the section refers to *tortious acts* and not to any act arising out of a *contractual* or *quasi-contractual* basis. Accordingly a suit for the refund of money paid under protest can be maintained without a notice under this section.—*Ambica Charan Mazumdar v. Satish Chandra Sen*, 2 C. W. N., 689. In a case under the Calcutta Municipal Consolidation Act (Beng II of 1888) it was held (*per* Henderson J.) that the corporation having withdrawn a sanction on the ground that the plaintiff had not complied with what it believed to be his undertaking, the withdrawal of the sanction was not done, nor did it purport to have been done under the Act; and that the suit for damages having been based upon such withdrawal, the special limitation provided in the Act did not apply—*Tullaram v. The Corporation of Calcutta*, I L. R., 30 Cal. 217. This section does not apply to suits for recovery of land See *Price v. Khelut Chandra Ghose*, 5 B L R., App 50, *The Municipi*

pal Committee of Moradabad v Charti Sing, I. L. R. 1 All. 269 and *Poorna Chundra Rai v Balfour*, 9 W. R. 535. It is doubtful whether a notice under this section is necessary when a suit is not for "any thing done" under the Act, but for something left undone, which a municipality is bound to do—*Peary Mohan Mukerjee v. Ambica Charan Bandopadhyay*, I. L. R., 24 Cal. 900 (903).

Notice—A suit was brought to recover from the Municipal Commissioners of Madras the balance of a sum of money due for timber supplied under a contract duly made with them. *Held* that the plaintiff was entitled to sue on the breach of contract without giving notice.—*Mayandi v McQuhae*, I. L. R. 2 Mad 124. In a case under the corresponding section of the Bombay Act, a notice alleging a cause of action to have arisen out of the acts of the servants and agents of the Commissioners and not out of the acts of a contractor, was considered to have been sufficient. The section requires the notice to state with reasonable particularity the cause of action—*Dhondiba Krishnaji and others v. The Municipal Commissioners of Bombay*, I. L. R., 17 Bom 307.

The Municipal Commissioners are entitled to one month's notice of action when they have been acting *bona fide*, in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover of the Act—*Gopee Kissen Gossain v Mr. W. H. Ryland and others*, 9 W. R. 280. A notice objecting to, and asking for a reconsideration of, the order complained of, is not sufficient—*Abhoy Nath Bose v. The Chairman of the Krishnagar Municipality*.—7 W. R. 92. The notice previous to suing a Municipal Committee for a thing done by them under the Municipal Act is only necessary where compensation is claimed for the thing done—I L R. 1 All. 269. In Bombay in a suit brought to obtain a declaration that a certain building erected by the plaintiff has been built in accordance with, and not in contravention of orders issued by the municipal authorities and also an injunction restraining the said authorities from pulling it down, the contention was that the suit was not maintainable without notice. The Bombay High Court, upon a review of the previous authorities on the subject, was pleased to hold that no notice was necessary. Their Lordships observed.—“The result of the cases above cited appears to indicate,

that for the purposes of section 45 (a section very similar in its terms to the present one-Ed.) what the Court has to look to is the real object of the suit, and the section requires notice only when the suit is for an act already done or purporting to have been already done, under the powers conferred. In such case only can it be necessary for the plaintiff to give an opportunity to make amends or compensation, and in such case, the delay necessitated by notice is comparatively immaterial. But when the suit is not for an act already done, neither can amends be claimable, nor can delay be obligatory — *Municipality of Parola v. Lakshmandas*, 1 L. R. 25 Bom., 142. The plea that no notice was given cannot be taken for the first time in special appeal — *The Municipal Committee of Moradabad v. Chatri Sing*, 1 L. R., 1 All. 269. The notice must be addressed to the Chairman, otherwise a suit against a Municipality is not maintainable. — *Mani Kasana Dhan v. Crooke, Secretary to the Municipal Committee of Gorukpur*, 1 L. R. 2 All. 296. The cause of action must be disclosed in the notice, and no other cause of action can be raised at the trial. — *Ullman and others v. The Justices of the Peace for the Town of Calcutta*, 8 B. L. R. App. 265.

It is necessary that the intending plaintiff should substantially inform the Municipal Commissioners or the officers concerned of the ground of complaint so as to enable them to see if there is any ground for the action; see *Jones v. Bird*, 5 B. & Ald., 837, he should, therefore, set forth sufficiently clear the grounds of the complaint. — *Smith & Co v. West Derby Local Board*, 3 C. P. Div. 423. It should be in the form of a notice, and not like a mere letter. An attorney's letter declaring that he has been instructed to take legal proceedings is informal; see *Lewes v. Smith*, Holt's N. P. C. 27; *Norris v. Smith*, L. R. 2 P. & D. 353. (See Justice Rampini's C. P. Code, notes under sec. 424).

The object of the notice is to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation (1 L. R. 3 Cal. 8, F. B.). *

A person suing a municipality for a refund of money illegally levied from him as house tax was bound to serve a previous notice on the municipality. — *Ranchad Varaybhai v. The Municipality of Dekor*, 1 L. R. 8 Bom. 421.

Limitation.—Duthoit, J. ruled that the question whether the special limitation provided by sec. 43, Act XV of 1873 (the N. W. P. and Oudh Municipalities Act) applied or not was to be determined by deciding whether the suit was brought in respect of anything done under the aforesaid Act or not. If it was, then the limitation provided by sec. 43 prevailed; if it was not, the ordinary law of limitation was the one to be applied.—*Brij Mohan Sing v. The Collector of Allahabad as President of the Municipal Committee*, I. L. R. 4 All. 102.

The right to obtain a declaration that the plaintiff is not liable to assessments under the Act, is a recurring right, and an action to obtain such a declaration is maintainable even if brought more than three months after the assessment.—*Ambica Charan Mozumdar v Satis Chandra Sen*, 2 C W. N., 689.

In the case of *Hughes and others v. The Chairman of the Municipal Commissioners of Howrah*, (19 W. R. 239) the act complained of was the illegal seizure of an omnibus, and Couch C. J. held that the three months' limitation must be counted from the date of the seizure, and the continued detention of the omnibus could not be treated as fresh causes of action from day to day. See also *Dwarka Nath Gupta v. The Corporation of Calcutta*, I. L. R. 18 Cal. 91.

Suits for compensation for an act without colour of, and contrary to, the law, if done *bona fide*, cannot be brought after the period allowed.—*Gooroodas Roy v. The Collector of Furreedpore*, 5 W. R. 137; see also I. L. R. 8 Bom 421 and *Mahammad Mohidin v. The Municipal Commissioners of Madras*, I. L. R. 25 Mad, 118.

Under sec. 24 of the Limitation Act, the period of limitation in a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, shall be computed from the time when the injury results.

For the proper description of the Commissioners sued, see sec. 29 of the Act.

364. Notwithstanding anything contained in section 3 of Bengal Act VI of 1870
Chaukidari lands. chakran (an Act to provide for the appointment, dismissal, and maintenance of village *chaukidars*)

the provisions of Part II of the said Act, relating to chaukidari chakran lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the panchayat of a village or any member thereof is required to discharge under the provisions of the said Part shall be discharged, and all powers which the panchayat of a village or any member thereof is authorized to exercise under the said Part shall be exercised, by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the municipal fund, and shall be available for the purposes of such fund

365. All police-officers shall give immediate information to the Commissioners of the municipality of any offence committed against this Act or any bye-law made in pursuance thereof.

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

When any person, in the presence of a police-officer, commits, or is accused of committing, any such offence, and refuses, on demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

Upon the recommendation of the Commissioners

any servant of the Commissioners in receipt of a salary of not less than ten rupees per mensem, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.

Changes.

The words "or any bye law made in pursuance thereof" in the first paragraph, and the last paragraph have been added by sec. 98 of Beng. Act IV of 1891.

366. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code) shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Commissioners or with any public servant, or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the Indian Penal Code, for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

367. Nothing in this Act contained shall be construed to—

Saving clause.

- (a) render lawful any act or omission on the part of any person which, but for this Act, would by law be deemed to be a nuisance ;
- (b) exempt any person guilty of nuisance from a suit in respect thereof ;
- (c) affect any enactment not hereby expressly repealed.

THE FIRST SCHEDULE.

(See Sections 8 and 17.)

Municipalities in which the Commissioners shall be appointed by the Local Government.

District.	Municipality.
Khulna	... Chanduria.
Ditto	... Debhatta.
Darjeeling	... Darjeeling
Hazaribagh	... Hazaribagh.
Singbhum	... Chaibassa,
Backerganj	... Nalchiti
Ditto	... Jhalukati.
Chitagong	... Cox's Bazar.
Muzaffarpur	... Lalganj.
Ditto	... Sitamarhi.
Darbhanga	... Rosera.
Champaran	... Bettiah.
Bhagulpur	... Colgong.
Cuttack	... Jajpur.
Ditto	... Kendrapara.

THE SECOND SCHEDULE

(See Sections 8 and 23.)

Municipalities in which the Chairman shall be appointed by the Local Government,

District.	Municipality.
Burdwan	... Dainhat.
Hooghly .	... Uttarpara.
24-Parganas	... [Suburbs of Calcutta.] Re- pealed by Beng. Act II of 1888.
Ditto	... Baruipur.

~~District—concl'd.~~~~Municipality—concl'd.~~

Nadia

... Santipur.

Do.

... Birnagur.

Do.

... Maheshpur.

Murshidabad

... Kandi.

Darjeeling

... Darjeeling.

Hazaribagh

... Hazaribagh.

Ditto

... Chattra.

Lohardaga

... Ranchi.

Singhbhum

... Chaibassa.

Manbhum

... Purulia.

Chittagong

... Cox's Bazar.

Patna

... Patna.

Gaya

... Gaya.

Shahabad

... Sasaram.

Ditto

... Bhubhua.

Muzaffarpur

... Sitamarhi.

Durbhanga

... Darbhanga.

Ditto

... Madhubani.

Saran

... Siwan.

Champaran

... Bettiah.

Cuttack

... Jajpore.

Ditto

... Kendrapara.

THE THIRD SCHEDULE.

Form A.—(See Section 112.)

*Notice to be published of the preparation of the List of
Assessment on Persons.*

BENGAL MUNICIPAL ACT, 1884.

(Section 112)

MUNICIPALITY OF

Whereas an assessment-list of the tax upon persons occupying holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday, and that the several persons whose names are included in the said assessment are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax-Collector or other officer authorized to receive payment, the first payment to be made on the first day of (), and every subsequent payment on or before the first day of (), the first day of (), and the first day of (), or in default thereof any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter or which may be found on the holding in respect of which such defaulter is assessed, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners.

Form B.—(See Section 112.)

*Notice to be published of the preparation of the
Valuation and Rating list of Holdings.*

BENGAL MUNICIPAL ACT, 1884.

(Section 112)

MUNICIPALITY OF

Whereas a valuation and rating list of the rate on the annual value of holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday ; and that the several owners of the holdings included therein are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the Tax Collector or other officer authorized to receive payment, the first payment to be made on the first day of (), and every subsequent payment on or before the first day of (), the first day of (), and the first day of (), and in default thereof, any arrear that may be due will be realized by distress and sale of the moveable property belonging to the defaulter, or which may be found on the holding in respect of which the valuation is made, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners

THE FOURTH SCHEDULE.

Form A.—(See Section 120.)

Notice of Demand under Section 120.

BENGAL MUNICIPAL ACT, 1884

To

MUNICIPALITY OF

Take notice that the sum of Rs. _____, being the amount due from you as shown in the accompanying bill, is hereby demanded from you, and that if you do not within fifteen days pay the same to an officer authorized to receive payment, or into the office of the Municipal Commissioners, the amount together with costs will be levied by distress and sale of your goods and chattels or otherwise as provided by law.

A. B.,

Chairman of Commissioners.

[The following note will be added at the foot of the above notice in those cases only in which the notice is to be addressed to a person who has not already paid one instalment of the tax at the rate at which the demand is made.]

Note.—If you have any objection to make against this demand, you may, instead of paying the amount which is hereby demanded, present a petition to the Commissioners praying for a review of the amount assessed (or rated). Such petition must be presented within fifteen days of the service of this notice, otherwise it will not be received. If you present such petition, no amount will be levied from you until the Commissioners shall have passed an order on your petition; but after fifteen days from such order the amount due by you, with such costs as the Commissioners may direct, will be levied unless it has been previously paid.

FORM B—(See Section 121)

**TABLE OF FEES PAYABLE UPON DISTRAINTS
UNDER THIS ACT.**

Sums distrained for.					Fee.	
					Rs.	A.
Under 1 Rupee	...	...	...	...	0	4
1 and under 5 Rupees	...	..	...	...	0	8
5 " 10 "	...	...	...	...	1	0
10 " 15 "	.	..	.	...	1	8
15 " 20 "	...	...	...	...	2	0
20 " 25 "	...	...	...	...	2	8
25 " 30 "	...	..	...	...	3	0
30 " 35 "	...	...	...	...	3	8
35 " 40 "	.	...	...	...	4	0
40 " 45 "	...	.	...	...	4	8
45 " 50 "	...	...	...	...	5	0
50 " 60 "	...	...	...	...	6	0
60 " 80 "	.	...	.	...	7	8
80 " 100 "	...	...	...	...	9	0
Above 100 "	...	..	...	...	10	0

The above charge includes all expenses, including the service of notice of demand, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each man. If the amount demanded be paid or the warrant discharged before the sale is held so that no sale is necessary, one-fourth of the fees specified in the above table shall be remitted.

Form C.—(See Section 122).

Distress Warrant.

BENGAL MUNICIPAL ACT, 1884 (Section 122).

To (here insert the name of the officer charged with the execution of the warrant).

Whereas _____ of _____ has not paid or shown sufficient cause for the non-payment of the sum of _____

rupees due for taxes (or rates) mentioned in the margin, although the said sum has been duly demanded in writing from the said

, and fifteen days have elapsed since the service of the notice of demand; This is to require you to distrain the moveable property of the said _____ wherever it may be found within the municipi-

ality, except ploughs, plough-cattle, tools or implements of trade or agriculture, or any other moveable property, subject to the same exceptions, which may be found within the holding specified in the margin to the amount of the said sum of

and the further sum of

to defray the charges of taking, keeping and selling such property; and if within ten days next after such distress the said sum of _____ shall not be paid, to sell the said prop-

erty, and having paid and deducted out of the proceeds of the sale the said sum of _____ and the charge of taking, keeping,

and selling such property, to return the surplus (if any) on demand to the person whom you shall have found in possession of the said property, and, if no demand be made, to pay the same to the Commissioners. If distress can not be made of sufficient property of the said _____, you are to certify the same to us

in returning this warrant.

A B,

Chairman of

Form D—(See Section 122)

Form of Inventory and Notice.

BENGAL MUNICIPAL ACT, 1884.

(Section 122)

(State particulars of goods seized)

Take notice that I have this day seized the property specified in the above inventory for the sum of _____ due for the taxes (or rates) mentioned in the margin, and that unless you pay to me or into the office of the Commissioners of _____ the said sum of _____ and

the further costs of this distraint as specified below, within ten days from the day of the date of this notice, the property will be sold.

(Signature of the officer executing
the warrant of distress.)

Costs of distraint—

Date

Form E—(See Section 124)

*Register of distraints of property and sales held on account of
arrears for the month of 19*

1. Name of defaulters.
2. Number on register and specification of the holding on account of which the arrear is due.
3. Amount of arrear due.
4. Amount of costs and penalty
5. Total amount to be realized.
6. Inventory of property seized under distress
7. Date of distress.
8. Date of sale.
9. Detail of articles sold.
10. Amount realized on each article
11. Purchaser's name.
12. Total amount realized.
13. Amount paid into the Commissioners' office on account of the arrear due, with date.
14. Amount paid into the Commissioners' office on account of costs and penalties.
15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due

16. How the surplus was disposed of, with date of such disposal.
17. Balance of arrear still remaining unrealized, if any.
18. On what date such remaining balance was realized or written off by authority.
19. Remarks (explaining why the property seized was released without sale if not eventually sold, &c., &c.)

THE FIFTH SCHEDULE.

(See Sections 86 and 131.)

TAX ON CARRIAGES AND ANIMALS.

			Per quarter. Rs. A.
For every 4-wheeled carriage drawn by two horses	...	4	8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under 13 hands	...	3	0
For every 4-wheeled carriage drawn by one pony under 13 hands	...	2	8
For every 2-wheeled carriage	...	2	8
For every horse	...	2	0
For every pony under 13 hands, and for every mule and donkey	...	0	12
For every elephant	...	6	0
For every camel	...	2	0

Carriages the wheels of which do not exceed twenty-four inches in diameter are exempted.

Change.

By sec. 89 of Beng. Act IV of 1894 the words and figures "for every 4-wheeled carriage drawn by one pony under thirteen hands—2-8" were added.

This omission in Beng. Act III of 1884 was pointed out in a Howrah case and it has now been made up,

THE SIXTH SCHEDULE.

(See Sections 2 and 4)

Act of the Governor-General in Council.

Number and year.	Subject.	Extent of Repeal.
XXI of 1857...	To make better provision for the order and good government of the station of Howrah. <i>[Acts of Bengal Council.]</i>	Sections 4, 5, 6, 8, 9, 16, 17, 24, 32, 34, 35, 36, 37, 39, 46.
V of 1873 ...	To provide for the levy of a lighting rate in Howrah.	The whole Act
V of 1876 ...	To amend and consolidate the law relating to Municipalities.	Ditto.
VI of 1878 ...	To provide for the cleansing and construction of latrines in first class Municipalities.	Ditto.



APPENDIX.

I

*[This circular explains the important changes made
by Act IV of 1894.]*

Cir. No. 34M., dated Calcutta the 27th August 1894.

From—C. W. BOLTON, Esq., Offg. Secretary to the Govern-
ment of Bengal,

To—All Commissioners of Divisions.

AT page 15 of Part III of the *Calcutta Gazette* of the 15th August 1894, it is announced that His Excellency the Governor-General in Council has signified his assent to the Bill to consolidate and amend the law relating to municipalities in Bengal, which was passed by the Bengal Legislative Council on the 28th April 1894. The Bill is printed in full in the Gazette of the same date; but, in order to draw attention to the alterations and additions which have been effected, a special set of copies has been printed, which I am now directed to forward to you for information and for communication to the officers subordinate to you, showing in italics the new matter added by Act IV of 1894 and indicating by the method of black underlines the passages in the old Act which have been omitted or altered. I am also to invite your attention to the following observations on the chief points in the new Act

2. The sections of the bill naturally divide themselves into two groups, viz. (a) those which make administrative

changes of a more or less important character; and (b) those which are merely, corrective, which repair omissions, give effect to the decisions of the Law Courts, recast the wording of old sections, and repeal those which are no longer necessary. The latter form, of course, far the larger group, but they need little notice, as for the most part they explain themselves.

3. The matters on which Government, on behalf of the rate-payers or for the better administration of the country, has felt itself obliged to assume larger powers than it possessed before are few in number, and in each case careful safeguards are provided. First comes the power taken in sections 9 and 9 A to disestablish a municipality or to alter its boundaries when it no longer fulfils the conditions, which originally justified its creation; then follow the power to appoint Commissioners *ex-officio* (section 14), the power given to Commissioners of Divisions to remove Commissioners (section 20); the delegation to Commissioners of Divisions of certain of the smaller powers of Government (section 29A); the appointment of a special Auditor when the accounts are in confusion (section 82) and, lastly, the power to appoint an assessor when it has been proved that the affairs of the municipality require it, and when the Commissioners will not move of themselves (section 111A).

4. On the other hand, the powers and responsibilities of the Commissioners have been advanced in many ways. They will now be able to order a survey (section 223 A), and to organise a fire-brigade (sections 349 A and B). Their financial powers are increased by the provision that the Commissioner of the Division shall not finally pass orders on their Budgets till they have had an opportunity of replying to his criticisms (section 76), and their income may be considerably developed in several ways; the maximum

of the water-rate is increased to 7½ instead of 6 per cent. (sections 86 and 279); they may levy in the same municipality both the tax on persons and the rate on holdings (section 84); arable lands are no longer exempt from assessment where the personal tax is in force (section 87); property in their temporary possession may be turned to pecuniary advantage (section 200); licenses may be issued at burning-ghats and burial grounds (section 260A), and the latrine rate may be levied from vacant holdings (section 322). Not less important than their increased financial powers are the larger powers of administrative control now confided to Municipal Commissioners. They may control the water-supply where its purity is suspected, even when private rights are affected (sections 199-199A); they will exercise large powers over ruined and dangerous houses, walls and trees (sections 208, 210, 210A); their powers in regard to building regulations may be greatly increased at their option (sections 237 to 242), and they have been enabled to frame wider bye-laws and to enact rules of business for their own guidance (sections 350, 350A and 351A).

5. Turning next to the most important sections of the Bill in detail, I am to direct your attention in the first place to sections 9, 9A and 9B of the Act. Under the old law a place which had once been made a municipality, however little it might be entitled to claim municipal government, could be removed from that category, or could have its limits varied, only upon the recommendation of the Commissioners at a meeting, a course which for obvious reasons was very seldom adopted: the new law does not take from the Commissioners this power of recommendation, but provides that, where the conditions laid down in section 10 as to amount or density or character of population no longer exist, the Lieutenant-Governor, after affording full opportunity for objections to be made

may exercise in this respect, without recommendation from the Municipal Commissioners, the powers which ordinarily he would only use upon the recommendations of that body.

6. Section 14 of the Act as amended provides that the appointed Commissioners may be appointed either by name or by official designation. The object of this provision is to avoid the inconvenience which sometimes occurs when an official is transferred who has been appointed by name only. As vacancies take place among the appointed Commissioners of municipalities in your division, it is for you to consider in each case whether the new nominee should be appointed by name or by his official designation. This change of principle involves petty changes in sections 17 and 23 of the Act.

7. By the amendment of section 15 of the Act, an important provision is added which enables Government to lay down by rule the authority who shall decide all election disputes under the Act. The question of amending the election rules is still under discussion, and orders on this point will issue hereafter. A proviso at the end of the section safeguards such jurisdiction as the Civil Courts may now be deemed to have in respect of these disputes. The franchise is extended by the same section to a class of persons whose exclusion hitherto has been felt to be anomalous, *viz.*, those who, being in receipt of a monthly salary of Rs. 50 or more, which implies intelligence and education, have yet had no vote because they were not independent ratepayers. The number of voters added to the list by this section will not be large, but they should all be citizens of weight and importance. A new clause added to this section also declares what shall be included in the term rates—a point which has not hitherto been decided

8. Section 20 of the Act has been recast so as to enact clearly on what grounds a Municipal Commissioner may be removed, and who shall pass the order for his removal.

9. Section 23 of the amended Act gives to the Local Government power to appoint the Chairman of a municipality entered in Schedule II by name or by official designation. In clause 2 of this section it is made quite clear that when the Commissioners of a municipality in Schedule I have once asked Government to appoint a Chairman, they do not thereby permanently surrender their right of election, but are entitled to exercise it on the occurrence of any future vacancy in the post of Chairman.

10. The alterations in section 26 of the Act enable a Chairman whose term of office under the Act would ordinarily have expired to carry on his duties till a proper and effective meeting is convened to elect his successor or ask Government to appoint him. By the same section the old body of the Commissioners will continue in office until the first meeting of their successors. Section 26A provides for certain subsidiary but necessary formalities in the same connection. By section 26B leave may be given to a Chairman or Vice-Chairman, and an omission in the present Act, which has not infrequently caused inconvenience, is thus repaired. As a corollary, section 28 authorises the grant of leave allowances to these officers when they are in the receipt of salary. Section 27A defines clearly the procedure to be followed when a Chairman, Vice-Chairman or Commissioner desires to resign.

11. By section 29A certain minor powers, which have hitherto been exercised by Government, may now be delegated to the Commissioner of the Division.

12. Two important alterations have been made in section 30. One has reference to the ruling of the Calcutta

High Court in *The Chairman of the Naihatt Municipality v. Kishori Lal Gossami*, I. L. R., 13 Cal., 171, and *Modhu Sudan Kundu v. Promoda Nath Roy*, I. L. R., 20 Cal., 732, where it was pointed out that the absolute property in the soil of a road was not vested in the Commissioners. This will no longer be the case. The object of the other alteration is to provide that a road, bridge, or drain need not be entirely excluded from the provisions of this Act but only from the operation of certain specified sections.

13. The important provisions of the new sections 37A to 37M were very carefully framed by the Select Committee before they were accepted by Council, and the Lieutenant-Governor trusts that they will receive at the hands of local authorities the same careful consideration.

It is hoped that recourse will be fully and frequently had to these sections in the larger municipalities which have not yet been provided with a wholesome water-supply, and that they will facilitate the execution of a much-needed reform with the least possible risk of discord or extravagance. It will be noticed first that compulsion will not be employed by Government, except in the last resort (section 37K), and not until the local authorities have had ample opportunity afforded them of taking action spontaneously, and, secondly, that even then the representations of a substantial and undisputed majority will suffice to procure the abandonment of the scheme.

14. Section 59 requires the consent of Government to the *ad interim* election of a Chairman, and section 66A provides for the settlement of disputes between a municipality and its external neighbours, such as another municipality or the District Board.

15. Some additions have been made to section 68 and 69 of the Act, which allow the municipal fund to be

expended on the maintenance of Municipal Benches and on the payment of an officer who may be specially deputed to revise their accounts.

16. Section 76 of the Act is more remarkable for what it omits than for what it enacts. An effort was made when the Bill was passing through Council to confine the supervision of the Commissioner of the Division to the major heads only of the annual budget estimate, and the refusal of the Council to accept this proposal has been commented upon with some acerbity. It has been alleged that Government insisted on a retrograde step which deprived Municipal Commissioners of a privilege they already possessed. The exact contrary is the case : the Commissioner of the Division has been invested with no new powers, but on the contrary an important, though reasonable, concession has been made in the provision that the Commissioner can no longer alter a municipal budget without affording the Commissioners an opportunity of considering and replying to any modifications which he may think desirable in their estimates.

17. Section 82 of the Act has been recast so as to provide for the appointment of a special officer to examine and report upon the accounts of a municipality whenever the yearly audit has shown that the accounts are in great confusion and the Municipal Commissioners, after due notice, have failed to set them straight.

18. Two important changes in the law on municipal taxation have been introduced in sections 85 and 86 of the Act. Both the tax on holdings and the personal tax may now be levied in the same Municipality, provided that both are not levied in the same ward. But where a municipality is not divided into wards, it must be considered as

consisting of one ward only, and both these taxes cannot, therefore, be in force there at the same time. By the second section quoted the maximum percentage for water-rate has been raised from $6\frac{1}{2}$ and 5 to $7\frac{1}{2}$ and 6 respectively. In section 87 of the Act it is now provided that in assessing the personal tax arable lands held by the assessee may be taken into account, but not any public burial ground or burning ghat. It was understood by the Council that, as a matter of fact, Municipal Commissioners when assessing a man's means and income are unable to leave out of consideration the income he derives from arable land, and it was deemed advisable to sanction this practice by legal enactment. Moreover, it was pointed out that, in the absence of such a provision, arable land within the boundaries of a municipality escaped taxation altogether.

19. As regards the rate on the value of holdings, some changes have been made in sections 97, 98 and 99 of the Act which explain themselves.

20 A new section, 111A, deals with the appointment of an assessor of municipal taxes—a question which has probably given rise to more discussion than any other embodied in the Bill. The provisions of the section as they now stand have been very carefully considered, and a power, the want of which has sometimes been very acutely felt, has been placed in the hands of Government with the minimum of inconvenience and the greatest possible regard to the dignity of Municipal Commissioners. The authority now conferred will, in fact, be exercised only when the necessity for action admits of no question, and it may be hoped that the very existence of this power in the statute book will make its exercise unnecessary.

21. The importance of the alteration in section 116

Appeal under section 13 of the Letters Patent No. 23 of 1893. Chairman, Barisal Municipality. Defendant-Appellant versus Srimutty Addya Soon-dury Mittra and others Plaintiffs-Respondents.

should not be overlooked. In accordance with the spirit of the decision of the High Court in the case specified in the margin, section 116 now provides that the decision of the Commissioners or of a Committee appointed by them under

section 114 shall be final only as regards the amount of assessment or rating: the larger question of liability to be assessed or rated will now be left to the decision of the Civil Courts.

22. In section 121 an important proviso has been added on the subject of distrained property, and the addition to section 125 provides a punishment for the breach of the orders in the earlier part of the section. Similarly, the addition of sections 141A and 147A is intended correct what is an omission in the old law, and the same may be said of the addition of the word "sewage" in section 187 of the Act.

23. Important additions have been made to the sections which deal with the control of bathing and washing places, wells and tanks. In the first place, in section 199 wells have been brought under the control of Commissioners to the same extent as other sources for the supply of water for drinking and culinary purposes, and secondly the last clause of that section has been re-written so as to define with greater precision the powers of Municipal Commissioners in respect of the private portion of any water-course which forms part of the public water-supply. Section 199A gives to the Commissioners the power of prohibiting the use of unwholesome water, the absence of which power has often been extremely inconvenient, and

the Lieutenant-Governor hopes that it will be freely exercised. It will now be possible for municipalities to close a source of water-supply which may be suspected, and to maintain this prohibition until the purity and wholesomeness of the water is established by chemical analysis in accordance with the rules laid down in the Sanitary Commissioner's circular No. 342 of the 25th June 1894. The reference may be made by the Commissioners, but would ordinarily be made by the person aggrieved by the closing of the well or tank.

24 By section 200 as now enacted, when an unwholesome tank or other source of water-supply has to be put in order, the Commissioners may call upon the owner or occupier to do one of three things, *i.e.*, either to re-excavate, fill up, or cleanse the place to their satisfaction. If the owner or occupier does none of these things, the Commissioners may do any one of them for him, and by the clause now added, if they re-excavate or fill up, they may retain possession of the property and turn it to profitable account until the expenses thereby incurred have been realised. The Commissioners are not entitled by the law to dictate to the owner which of the three courses open to him he is to pursue.

25. Section 208 has been re-written so as to give the Commissioners power in respect of trees, hedges, &c., which are likely to cause damage or obstruction, or to foul the water of any well or tank.

26. The powers of the Commissioners in regard to buildings in a dangerous state have been a good deal extended in sections 210 and 210A, and these sections should be carefully noted. The Commissioners can now interfere to protect the inmates of a building against the consequences of their own apathy or neglect. The Lieutenant-Governor has no doubt that the good sense of the local

authorities throughout the province will prevent the powers now given from being misused to the annoyance of individuals.

27. The penal provisions of section 217 have been extended to section 199A ; those of section 218 to sections 206 and 207 ; and those of section 219 to section 210A, and persons infringing the provisions of those sections can now be punished for so doing.

28. The addition to section 220 should be noted. It is now formally declared by law that wherever the whole of the provisions of any one of the Parts VII, VIII or IX of the Act of 1876 were in force when Act III of 1884 became law, the whole of each of the corresponding Parts VI, XI or X of this Act shall be considered to have been in force. This provision was necessary in order to remove doubt as to the continued application of these Parts. Where only a portion of the provisions of any one of Parts VII, VIII and IX of the Act of 1876 was in force when Act III (B C) of 1884 became law, its continuance was secured by the provision of section 1 of Act III of 1884, as further explained by the additions made to section 2 by the present amending Act IV of 1894. The result is that all notifications or orders passed, and all rules made under Act V of 1876, are still in force, unless expressly rescinded even although the number of the Parts or sections quoted in them may have been altered.

29. By section 223A of the Act power has been given to make a survey, the cost of which is chargeable to the municipal fund under section 69 (9).

30. The sections which refer to building regulations (sections 236-244 of the Act) have been considerably expanded and should be carefully perused. The provisions

of section 241 are suitable only to large municipalities, which include many masonry buildings; and while all the remaining sections of this group came into force on the passing of this Act in every municipality in which the corresponding sections of Act III of 1884 were in force at the time, it will be observed that the provisions of section 241 are expressly exempted from the operation of this general rule, and that this section will not take effect in a municipality until it has been specially extended thereto at the request of the Commissioners at a meeting.

31. Some small alterations have been made in the sections relating to burial and burning grounds, and it is believed that some income might be derived from the licenses which may now be granted under section 260A. These receipts might well be devoted to the improvement of these places which are often allowed to remain in very bad order.

32. Three important additions have been made to the provisions of sections 261 and 262, which deal with certain offensive or dangerous trades or occupations. Places for the storage of rags or bones or both have been added to the list of those for the use of which a license is necessary and the last clause of the section has been so re-written as to safeguard, as far as possible, persons following any one of the specified trades or occupations from having to pay unreasonable and unsuitable fees for the privilege. It is important to note that in future no fees can be levied under this section until the scale has been approved by the Commissioner of the Division. No time should, therefore be lost in submitting the scale for sanction. Lastly, section 262A, empowers the Commissioners to prohibit the burning of bricks, etc., for private purposes within defined limits. Under section 263, as now amended, any person who keeps even one horse or pony or one head of cattle

for the purpose of trade or business may be required to take out a license. The object of this change is not to raise an income from the poor, but to bring under control all the places where such animals are kept.

33. The additions in the penal sections—270, 271, and 273—merely give effect to provisions in other parts of the Act.

34. The alterations in Part VII of the Act, which deals with water-supply, are the outcome of prolonged and elaborate discussion. The maximum amount of the water-rate has been raised from 5 and $6\frac{1}{2}$ per cent. to 6 and $7\frac{1}{2}$ per cent. respectively. The principle on which it is to be calculated is carefully defined; and a fair share of the cost of collection and of general supervision has been made a legitimate charge against the fund: lands used exclusively for agricultural purposes are exempted from assessment, and power is left to the Commissioners to make special arrangements for the supply of water to persons beyond the limit up to which a water-rate can be levied.

35. A new section has been added (section 318A) making the lighting rates into a separate fund and defining how they may be expended.

36. Important changes have also been made in Part IX which deals with the cleansing of private privies and cess-pools. It is now clearly laid down that this Part does not deal with public latrines, which should be provided under section 136 as part of the general scheme of conservancy in the town, but with the cleansing of private privies and cess-pools only. It was at one time proposed to substitute for the existing rate a scale of fees for service rendered, but after the fullest consideration the proposal was abandoned and the existing arrangements maintained. Cess-pools have been brought within the scope of this Part,

as it appears that in some cases it was difficult to distinguish between a cess-pool and a privy. No privy rate will be assessed on a holding which does not contain a dwelling-house (section 321), nor on certain public buildings (section 334A), nor will it be levied from a shop-keeper twice over (section 322). Lastly, remissions or refunds will be allowed for vacant holdings. The effect of these changes ought to be to lighten the fees charged under this Part to the poorer residents of the municipality.

37. The effect of the additions made to section 339 in Part X (regulation of markets) is to protect the proprietors of old markets from arbitrary treatment. The section compels Commissioners to renew year by year licenses for markets lawfully established at the time of the extension of this Part to the municipality, so long as the Chairman continues to give year by year the certificate required by section 340 that the land is fit for use as a market for the sale of provisions. When a market is established after the extension of this Part to the municipality, no such compulsion exists, and the Commissioners may give or withhold the license as they please.

38. Part XI A is entirely new and empowers Municipal Commissioners to make arrangements for the extinction and prevention of fire. The cost of these arrangements is declared to be a legitimate charge upon the municipal fund by section 69(8).

39. It has been found that the wording of section 350 of Act III of 1884 was not sufficiently specific, and that, as a matter of fact, many bye-laws have been made from time to time, and have been accepted by Government which do not, strictly speaking, fall within the scope of the section as it formerly stood. The wording has, therefore been recast, and the matters in regard to which bye-laws

may properly be made have been more clearly defined. At the same time an opportunity has been taken in section 350A to give to hill municipalities more stringent powers over private owners of land as regards cutting down timber and excavation of building sites. A new section (351A) has been added, empowering the Commissioners of all municipalities to make rules for the conduct of business in the same way as District and Local Boards have been empowered under Act III (B. C.) of 1885. The Lieutenant-Governor proposes to circulate for adoption by Municipal Commissioners a set of model bye-laws and one of model rules of business. Meanwhile the bye-laws which have already been passed by each municipality and confirmed by Government will continue in force until repealed or altered in the proper manner. Power has been taken by the Lieutenant-Governor to cancel any bye-law which he has sanctioned: an omission in the former law which can only have been due to oversight.

40. The last section to which it is necessary to refer is 365, which now extends to offences against bye-laws as well as those against the Act itself, and allows certain selected servants of a municipality to exercise the powers of a police officer under the section.

II

MEDICAL CIRCULAR No. 20 T.—M.

Darjeeling, the 30th September 1896

FROM H. H. RISLEY, Esq., C.I.E.,

Secretary to the Government of Bengal.

To all Commissioners of Divisions.

SIR,

I am directed to invite your attention to the important changes introduced into the provisions of the Bengal

Municipal Act of 1884, so far as they relate to the establishment and maintenance of hospitals and dispensaries by the amending Bill recently passed in the Bengal Legislative Council.

2. Under the proviso to the section 69 as it stands in the Act, the establishment and maintenance of hospitals and dispensaries is one of the purposes on which Municipal Funds may not be expended except with the consent of a majority of the Commissioners present at a meeting specially convened for considering the subject. Section 69 as remodelled by the amending Bill, introduces a proviso based upon a different principle and includes hospitals and dispensaries among the purposes that must be sufficiently provided for before any portion of the Municipal Funds can be applied to any of the purposes specified in clauses viii to xii. The practical effect of this is to bring the expenditure of a municipality on the establishment and maintenance of the hospitals and dispensaries within control exercised by the Commissioner of the Division under section 76 of the Act and thus to enable him to require the Commissioners to make adequate provision for these important purposes.

3. Section 69 A (1) of the Act as amended provides for the keeping of a separate account of receipts and expenditure on account of municipal hospitals and dispensaries and the Account-General has accordingly been instructed to include in the Municipal Account Rules now under revision new rules for giving effect to the above provisions of the law.

III

MUNICIPAL CIRCULAR NO. 56M.

Calcutta, the 7th December 1896

FROM H. H. RISLEY, ESQ., C.I.E.,

Secretary to the Government of Bengal.

To all Commissioners of Divisions.

SIR,

In continuation of Government Circular No. 20 T.M., dated the 30th September 1896, I am directed to invite your attention to the following changes introduced into the Bengal Municipal Act, 1884, by Bengal Act II of 1896 which came into force on the 28th October last.

2. The first proviso to section 15 has been recast so as to omit clause (3), which was unintelligible and to extend the franchise to certain classes of persons who did not enjoy it under the old law. Subject to the conditions specified in the proviso, all persons who have paid or been assessed to income tax or who, besides possessing the occupancy qualification defined in the proviso, have passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other university, or hold a license granted by a Government Medical School to practise medicine or a certificate authorizing them to practise as Revenue Agents, are now for the first time entitled to vote at municipal elections. The clause of section 15 relating to the fifty-rupee income qualification of members of joint families has been omitted as it is covered by clause (ii) of the section as amended.

3. By the amendment of the section 69, Municipal Commissioners are now enabled to devote a portion of the funds at their disposal to the establishment of open spaces for the promotion of physical exercise and education; the training and employment of female medical

practitioners and of veterinary dispensaries the employment of qualified persons to prevent and treat diseases of horses, cattle, etc.; the improvement of the breed of cattle; and the establishment and maintenance of free libraries. At the same time by the amendment of the proviso to the section, the restriction imposed by Act III of 1884 on expenditure on education, dispensaries and vaccination is removed, and these purposes are classed among those ordinary purposes of municipal expenditure which are controlled by the Commissioners of the Divisions under section 76 of the Act. All of these ordinary purposes are given priority over the special purposes referred to in clauses viii to xiii.

4. The payment of travelling expenses incurred by a Municipal Commissioner in attending a meeting convened for the purpose of recommending a person for nomination as a member of the Bengal Legislative Council has been legalised by the insertion of clause (2) in section 69 of the Act.

5. The words "habitually used" in sections 131, 142 and 147 A, which have been found to be ambiguous, have been replaced by the words "used in ordinary course of business," a definition of which as applied to carriages, animals and carts, has been given in the two new sections 141B and 147B. Clauses have also been added to section 147A providing for the levy and apportionment of cart registration fees.

6. Two important additions have been made to section 279. The object of the first is to legalise the levy of differential water-rates, which may vary with the distance of houses and lands from the nearest stand-pipe or other source of water-supply, and may be higher in premises with water connections than in case of other premises.

By the second addition holdings consisting only of tanks are exempted from water-rate.*

7. The words inserted in section 321 render holdings which contain privies but no dwelling-house liable to pay the fees mentioned in the section. By section 322 as amended, a proportionate share of the proceeds of these fees is to be devoted to the cost of the staff employed in collecting them, in supervising the collections and in keeping and auditing the accounts.

8. Lastly, a clause has^o been added to section 350 empowering the Commissioners to frame bye-laws prohibiting the letting-off of fire-arms and fire-works, except with the permission of the Commissioners and after payment of fees.

IV

No. 47 M.

Dated Calcutta, the 16th November 1896.

FROM H. H. RISLEY, Esq., C. I. E.,

Secretary to the Government of Bengal.

To all Commissioners of Divisions.

On a reference made by the Chief Commissioner of the Central Provinces, the attention of the Lieutenant-Governor was drawn to the question of the interpretation put upon Article, (a) of Schedule II of the Court-Fees Act by Municipalities of Bengal. It appears from the replies to a Circular * issued on the subject that the practice varies greatly in different Municipalities and that it is hardly anywhere in strict accordance with the law.

* No. 1T-M., dated 22nd April 1896.

I am directed to request therefore that all the Municipalities in your Division may be informed that in the opinion of the Legal Remembrancer only those applications presented to the Commissioners of a Municipality are chargeable with a 1-anna stamp, which relate solely to matters of "conservancy" or "improvement" such as those covered by Parts V, VI, IX and X of the Bengal Municipal Act, III of 1884 as amended by Bengal Acts IV of 1894 and II of 1896. Municipal Commissioners should act on this view of the law until further orders

V

Cir No 38 M.

Dated Calcutta, the 5th August 1896.

FROM H. H. RISLEY, Esq. C. I. E.,

Secretary to the Govt of Bengal.

To all Commissioners of Divisions (except Rajshahi).

It has been brought to the notice of the Lieutenant-Governor that inconvenience arises from the existing orders of Government requiring the submission of two alternative names for every appointment to be made on Municipal Committees or on District or Local Boards.

I am to request, therefore, that in future only one name may be sent up for each vacancy and that it may be stated, in every case, whether the person nominated is willing to serve.

VI

Dated Calcutta, the 24th March.

Endorsed—By the Government of India, Finance and Commerce Department.

Copy of the following forwarded to all Local Governments and Administrations for information.

No. 14098. R.,

Dated Calcutta, the 24th March 1898.

FROM J. F. FINLAY, Esq.,

Secretary to the Govt. of India,

Finance and Commerce Department.

To the Secretary to the Government of the North-Western Provinces
and Oudh, Municipal Department.

I am directed to acknowledge the receipt of your letter (No. 2216 XI—414 A) dated the 21st. Sep. 1897, on the subject of stamping copies of municipal records.

2. His Honour the Lieutenant Governor has no objection to take to the principle that certified copies of municipal records should, before being given in evidence in courts, be liable to stamp duty; but he sees no reason why the public, when obtaining certified copies of municipal records for their private use, should be liable to charges for stamps from which they are exempt in the case of copies obtained from the courts for the same purpose.

3. I am to say that, in the opinion of the Government of India, when a copy of a document is taken for private use only and no stamp duty is charged, it is not necessary that it should be certified as a true copy. For some years past it has been the practice in Bengal, Bombay and Assam to issue uncertified copies of documents filed in court when they are required for private use and information only. The practice is desirable in order to prevent copies being given surreptitiously, and the Government of India are not disposed to think that it tends to encourage fraud; a document might be forged if it were required for some other purpose than private use, but when it is required for such use it is unlikely that any man would forge a copy.

4. After careful consideration of the suggestion made by His Honour the Lieutenant Governor, the Government of

India are of opinion that when certified copies of municipal records are required, they should be stamped, but that there is nothing which need prevent the issue by the secretary of a municipality of uncertified and unstamped copies of such records when required for private use.

Circular No 47M.

Copy forwarded to all Commissioners of Divisions for information and communication to District Boards and Municipalities in their respective Divisions, in continuation of Government Circular NO-16 L. S.-G, dated the 1st May 1893

VII

MUNICIPAL DEPARTMENT.

MUNICIPAL.

No. 3339 M.

Calcutta, the 20th December 1901

FROM H. M KISCH, Esq.,

Offg Secretary to the Government of Bengal.

To the Commissioner of the Patna Division.

SIR,

I am directed to acknowledge the receipt of your letter No. 4030 G, dated the 28th September 1901 recommending that the resignation tendered by ** Subdivisional Officer of Siwan, of his appointment as *Ex-Officio* Chairman of the Siwan Municipality may be accepted.

2. In reply, I am to point out that an officer appointed by official designation to be Chairman continues to occupy that post from the date of his appointment up to the date of the reconstitution of the body of Municipal Commissioners irrespective of intermediate changes in the personnel

of the officer appointed *Ex-officio*. The resignation of each individual officer on the occasion of a transfer is therefore unnecessary.

3. At the same time, I am to invite your attention to paragraph 2 of section 24 and paragraph 1 of section 26 A of the Bengal Municipal Act, which restrict the term of office of the Chairman of a Municipality, whether appointed *Ex-Officio* or by name, to three years, and require that a Chairman, whether appointed by name or official designation shall resign his office at the first meeting of the Commissioners, after the triennial reconstitution of their body subject to the proviso that the resignation in the case of an *Ex-officio* Chairman does not take effect until a new Chairman is appointed. These provisions of the law appear to have been, in some cases, overlooked in the past, and I am to request that the necessity of strictly observing them in future may be impressed upon all Municipalities in your Division.

VIII

MUNICIPAL DEPARTMENT.

MUNICIPAL

CIRCULAR No 14 T—M.

Darjeeling, the 2nd September, 1902.

FROM E W. COLLIN, Esq.,

Offg Secretary to the Government of Bengal.

To all Commissioners of Divisions (except Burdwan).

SIR,

A question was recently submitted to Government for consideration whether, when a bill under section 120 of the Bengal Municipal Act, 1884, has been duly presented and a notice of demand in Form A, Schedule IV of the Act has been served on a rate-payer, the Municipal Commissioners are debarred from issuing a second notice of demand

so as to extend the period of limitation of three months laid down in section 121, within which a warrant may issue. The Advocate-General has agreed with the Legal Remembrancer that, in the circumstances referred to, a second notice of demand can not be legally issued by the Commissioners.

2. I am directed to forward the enclosed copies of the Advocate-General's opinion and of a letter from the Legal Remembrancer on the subject, and to request that the attention of the Commissioners of the Municipalities in your Division may be drawn to the ruling.

OPINION.

I am of opinion and for the reasons given in letter No. 1291, to the Commissioner of the Patna Division by the Hon'ble Mr. B. L. Gupta Legal Remembrancer, dated Calcutta, the 19th October 1901, that when a bill under section 120 of the Bengal Municipal Act [Act III (B. C.) of 1884 as amended by Act III (B. C.) of 1886 and by Act IV (B. C.) of 1894] has been duly presented and a notice of demand in Form A, Schedule IV, has been served, the Municipal Commissioners can not issue a second notice of demand.

30th August 1902 }

J. T. WOODROFFE,

Advocate-General.

No. 1291.

Dated Calcutta, the 19th October 1901.

FROM THE HON'BLE B. L. GUPTA,

Supdt. and Remembrancer of Legal Affairs.

To The Commissioner of the Patna Division.

I have considered the points raised in your No. 1625 G, dated the 20th September last, and in reply have the honour to state as follows.

2. The notice of demand under section 120 of the Bengal Municipal Act III (B. C.) of 1884, may be served as soon as the bill is presented and not paid. The presentation of the bill and service of notice (with copy of bill attached) may be effected on the same occasion or at the same time and interview, one immediately following the other.

3. Under section 121, the amount if not paid within 15 days may be levied by distress and sale of the moveable property of the defaulter at any time within three months after the date of service of the said notice or of the order made on an application for review. I think this must be construed to mean that the limitation of three months is an absolute bar to the recovery of the same arrears by distress and sale after the expiry of three months, and that a fresh period of three months can not be taken by including the same old arrears in any subsequent notice of demand. Were it otherwise the words three months after the date of the order made on an application for review would be rendered nugatory. Besides, wherever the law allows summary mode of realization of money and prescribes a limitation of time, the limitation is absolute.

4. In the present instance the first limitation of six months under section 120 is clearly absolute and there are no reasons for thinking that the second limitation of three months under section 121 is not absolute. Although section 120 says that such notice of demand may be served at any subsequent time, it does not imply that it may be served more than once. The language of section 121 leads me to hold that the notice can be served only once.

IX

MUNICIPAL DEPARTMENT.

MUNICIPAL.

CIRCULAR No. 18M.

Calcutta, the 7th November 1802.

FROM E. W. COLLIN, Esq.,

Offg. Secretary to the Government of Bengal.

To all Commissioners of Divisions, (except the Budwan Dn)

SIR,

The attention of Government has been drawn to the ruling of the High Court in the case of **Emperor versus Mathura Prosad**, published at page 491, Volume XXIX, part VII of the Indian Law Reports, Calcutta Series, which is likely to have a prejudicial effect on the working

of the building regulations, in mofussil municipalities. It will be seen that the reference of the Sessions Judge was for setting aside the order for demolition, which appears to have been irregularly passed under section 238 (1) of the Bengal Municipal Act by the Subdivisional Magistrate, whereas such an order can only be passed by the Commissioners. The High Court, however, set aside the conviction under sec. 273 (1) as well as the order for demolition. The Legal Remembrancer, who has been consulted in the matter, is of opinion that the learned judges overlooked sec. 240 of the Act which gives a definition of the terms "erect" and "re-erect," and which, if referred to, would have altered the aspect of the case. I am to observe that the decision should not be permitted to influence the actions of municipalities in enforcing the building regulations, and to request that, in the event of any application or reference being made to the High Court against a conviction under sec. 273 (1) of the Bengal Municipal Act, the Legal Remembrancer may be promptly informed by the District Magistrate, so that he may cause the Crown to be represented at the hearing of the case before the Court.

2. Meanwhile, a Magistrate convicting under sec. 273 (1) should in every judgment, expressly refer to all the sections concerned, including sec. 240. I am to request that you will be so good as to communicate these orders to all District and Subdivisional officers and Municipalities in your Division for information and guidance.

X

ELECTION RULES.

NOTIFICATION.

No. 1345 M.—21st November 1896—It is hereby notified for general information that, in supersession of all previous rules on the subject.

the Lieutenant-Governor is pleased to lay down the following rules under sections 15 and 69 of the Bengal Municipal Act III of 1881 as amended by Bengal Acts IV of 1894 and II of 1896, for the conduct of all future elections of Commissioners of Municipalities.—

1. In these rules—

(a) The term “the Magistrate” has the meaning defined by section 6, sub-section (8) of the Act

(b) A “general election” means an election held under section 14 of the Act.

(c) A “bye-election” means an election held under section 27 of the Act.

(d) 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.

Of the qualification of voters.

2. Every male person shall be eligible to vote, who has attained the age of 21 years, has been resident within the limits of the Municipality for not less than 12 months, immediately preceding the election, has been duly registered as provided in rules 4 to 12 inclusive, and who—

- (i) has, during the year immediately preceding such election paid an aggregate amount of not less than Rs. 1-8 (Rs. 3 in Howrah, and Cossipore-Chitpur) in respect of any one or more of the rates specified in section 15 of the Act, or in respect of the fees for the registration of carts under section 143 of the Act; 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 specified in section 15 of the Act, an aggregate amount of not less than Rs. 1-8 (Rs. 3 in Howrah and Cossipore-Chitpur) ; or
- (iv) has, during the same period, paid not less than Rs. 20 as rent in respect of the occupation by him of a holding or part of a holding which is assessed with the rate under section 85, clause (b) of the Act.

3. At elections held in newly-created Municipalities before municipal taxation has been imposed, every male person shall be eligible to vote, who has attained the age of 21 years, has been resident within the limits of the Municipality for not less than 12 months immediately preceding the election, has been duly registered as provided in rules 4 to 11 inclusive, and who—

- (1) prior to the creation of the Municipality was qualified under the rules framed under section 138 (a) of the Bengal Local Self-Government Act, 1885, to vote at an election of members of a Local Board in respect of the area within the limits of the newly-created Municipality ; or
- (2) has, during the year immediately preceding the election, paid an amount of not less than 12 annas on account of chaukidari tax, or
- (3) 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 an amount of not less than 12 annas on account of chaukidari tax.

Of the registration of voters.

4. In every Municipality a register in Form A of all persons qualified to vote shall be prepared by or under the orders of the Chairman as soon as may be after these rules shall have come into force, and shall from time to time be corrected and added to as the Chairman may direct, and shall be thoroughly revised by him at least three months before the date fixed for any general election as hereinafter provided. Such register shall be open to inspection at the Municipal Office by any resident of the Municipality at any time between 11 A. M. and 5 P. M. Sundays and holidays excepted.

5. Not less than 60 days before the date fixed for any general election, the Chairman shall publish the register as revised by him under the last preceding rule at the Municipal Office and at such other places as he may think fit or as the Commissioners in meeting may direct.

6. Any person whose name does not appear in the register, and who claims the right of voting may, within fifteen days of the publication thereof apply to the Chairman in writing to have his name added to the register or substituted for any name in the register.

7. Any person who considers that any name in the register of voters prepared under rule 4 ought to be omitted, may, within fifteen days after the publication of the register apply to the Chairman in writing to have such name omitted.

8. The Chairman shall, not less than 30 days before the date of election, send a letter to every incorporated Company entitled to vote, requesting it to fill in a form, which shall accompany such letter, with the name of the person authorised to vote on behalf of such Corporation, and to return the same within seven days. Upon receipt of the form the Chairman shall cause the name stated therein to be entered in the register revised under Rule 9, and the person whose name is thus entered shall be deemed to be duly authorised to vote on behalf of the said Corporation.

9. Every application for the revision of the register under rule 6 and 7 shall be considered and decided by the Chairman with all reasonable despatch on some date of which three days' notice shall have been given by publication in the Municipal Office; and not less than fifteen days before the date of the election, the Chairman shall publish :

revised register in the same manner as the original register containing all alterations or amendments made in such original register by his order or by order of the Magistrate under the next succeeding rule.

10. Any person whose application under rules 6 or 7 has been refused may, within eight days after such refusal, apply to the Magistrate for an order to have his name inserted in, or a name omitted from, the register of voters, and such Magistrate shall, after enquiry, make such order as to the insertion or omission of the name as appears to him to be just, and the Chairman shall, upon receipt of a copy of such order give effect to the same, and such order shall be final.

11. The register thus prepared and amended shall be the final register of persons entitled to vote whether at a general election or at any bye-election.

Provided that at any time any person whose name is not in the register may apply to the Chairman to enter his name therein, and rules 9 and 10 shall be held applicable to such claim. If such application is made not less than fifteen days before a bye-election, it shall be decided in time for such bye-election, but not otherwise.

12. It shall not be necessary to publish the register or extracts from the register on the occasion of bye-elections, provided that the register shall at all times be open to inspection by rate-payers at the Municipal Office, and that all persons whose claims have been admitted under the preceding rules shall be entitled to vote at such elections. The Chairman shall in case of each bye-election publish a notice stating the latest date upon which claims to be registered will be received.

Of the qualification and the nomination of candidates.

13. Any person qualified to vote under these rules shall be qualified to be elected a Commissioner.

14. Every person who is a candidate for election shall send his name to the Chairman in writing in form B, with the necessary particulars filled up in columns 2, 3, 4, and 5, not less than 21 days before the day fixed for the election, supported by the signatures in columns 5, 6 and 7 respectively of two electors in each ward in which he proposes to stand, who propose and second his nomination, and of eight electors in each such ward who approve his nomination. The Chairman shall publish a list of all candidates in the same form at the Municipal Office not less than fifteen days before the day fixed for election.

Of the manner of holding elections.

15. The elections and bye-elections shall be held on such dates as may be fixed by the Commissioner of the Division, and notified by him in the *Calcutta Gazette*.

16. In the event of the number of candidates for election in a municipality or in any ward of a Municipality not being greater than the number of vacancies, such candidates shall be deemed to be elected.

If the number of candidates exceeds the number of vacancies, a poll shall be held.

17. The poll shall be held at such time and place as the Commissioners in meeting or the Chairman may determine, and the time and place fixed shall be notified, by beat of drum and by the publication of notices, at the same time as the list of candidates is published under rule 14.

18. Each voter shall be entitled to vote for the ward in which he ordinarily resides, and for no other, and to give as many votes as there are vacancies for such ward. Provided that where the Municipality has not been divided into wards, each voter shall be entitled to vote for as many candidates as there are vacancies in the entire number of Commissioners. Provided also that he may give all or any number of the votes to which he is entitled to any one candidate.

19. All votes must be given in person, and no votes will be received by proxy or in writing.

20. The Chairman or other fit and proper person, not being himself a candidate for election, deputed by the Chairman for the purpose, shall preside at the election for each ward assisted by a Committee of not less than three and not more than five rate-payers of the ward, nominated by the Chairman. If any of the members of such Committee fail to attend their places may be filled by the presiding officer from the rate-payers present at the polling station.

21. The presiding officer shall read out the list of candidates and state the number of vacancies, and the names of the voters and the votes given by them shall be recorded by him, or by the members of the Election Committee under his personal supervision, in Form C.

22. No objection to a voter shall be entertained except on the ground that he is not the person under whose name as entered in

Register A he claims to vote. Such objections shall be summarily decided by the presiding officer.

23. The presiding officer shall then and there declare such candidates as have the largest number of votes to be duly elected and shall report accordingly to the Chairman, if he is not himself the Chairman.

Provided that, if the majority for any candidate consists only of votes to which objections have been raised, and if the presiding officer has been unable to decide such objections summarily as provided by Rule 22, he shall adjourn the proceedings and report the matter to the Magistrate. The Magistrate shall hold such enquiry regarding the disputed votes as shall be necessary, and his decision shall be final. On the termination of such enquiry, he shall declare such candidates as have the largest number of votes to be duly elected.

24. If there be an equality of votes for the same vacancy, and if the number of vacancies does not admit of all the candidates who have obtained an equality of votes being elected, the presiding officer, or, in the case prescribed in the proviso to Rule 23, the Magistrate, shall give a casting vote or votes.

25. In the event of any candidate being elected for two or more wards, such candidate shall be at liberty to choose the ward which he will represent, and in every other ward in which the said candidate has been returned, the result of the election shall be determined as if no votes had been recorded for him. Provided that if there is no other candidate for whom votes have been recorded to fill the vacancy thus caused, a fresh election shall be held.

26. The list of duly returned candidates for the whole Municipality shall be forwarded by the Chairman through the District Magistrate to the Commissioner of the Division for publication by him in the *Calcutta Gazette*.

27. In municipalities where the Magistrate is the Chairman, the duties assigned to the Chairman in the foregoing rules shall be discharged by the Vice-Chairman.

28. If in any case such a course appears to the Local Government to be necessary, it may direct that the Magistrate shall perform all or any of the duties assigned by the foregoing rules to the Chairman or the Commissioners in meeting.

Provided that the Magistrate shall always perform such duties for the purposes of the first general elections in newly created Municipalities.

General.

29 All disputes arising under these rules shall be decided by the Magistrate, and his decision shall be final.

30. No person in the employment or pay of the Municipality shall, directly or indirectly, engage in canvassing for votes, or otherwise assist in the election of any candidate, otherwise than by giving his own vote. Any breach of this rule will render him liable to dismissal.

31. All costs incurred in the preparation of the register of voters, the publication of notices, the holding of elections, or taking any other necessary action under these rules, shall be payable by the Commissioners out of the Municipal Fund. In the case of a newly-created Municipality, in which no Municipal Fund has been formed, the Magistrate of the district shall advance such sums as may be required; and such sums shall be recoverable from the Municipal Commissioners within six months.

FORM A.

Register of persons qualified to vote in

Ward of

Municipality.

Serial number	Number in assessment list.	Name of voter.	Father's name.	Age.	Period of residence.	Address.	Particulars of qualification.	REMARKS.
1	2	3	4	5	6	7	8	9
1	19	Hari Das	Lachnu Das ..	34	2 years ...	Muchipara	Pay Rs. 2 house-tax	

FORM B.

Serial number.	Name of candidate.	Address.	Particulars of qualification as a voter.	Ward or Wards in which election is sought	Signature of elector proposing.	Signature of elector seconding.	Signatures of eight electors supporting.	Serial number of candidate as a voter in the register of voters (Form A).	REMARKS.
1	2	3	4	5	6	7	8	9	10

N. B.—Columns 1 and 9 to be filled up in the Municipal Office.

FORM C.

Register of votes given at the poll in Ward of Municipality on the

Serial number as in Form A.	Names of voters.	NAMES OF CANDIDATES.				REMARKS.
		N. K. Dass.	Abdul Kadir.	N. N. Chatterjee.	S. N. Banerji.	
1	2	3	4	5	6	7
1	Hari Dass	.....	.....	1	1	Two vacancies.
2	Fakir Ali	.. ..	2	.....	.....

H. H RISLEY,
Secy. to the Govt. of Bengal.

NOTIFICATION.

No. 5472M.—*The 13th December 1897.*—It is hereby notified for general information that in supersession of all previous rules issued under section 82 of Bengal Act III of 1884, as amended up to the 1st November 1896, the Lieutenant-Governor is pleased to make the following rules under the aforesaid section of the Act for keeping the accounts of Municipalities and also for the audit of such accounts. These rules will come into force on the 1st April 1898:—

XI

ACCOUNT RULES FOR MUNICIPALITIES.

Preliminary.

In these rules, unless there be something repugnant in the context—

- (i) the term 'treasury' means a Government treasury with which a Municipality banks, and includes a bank or a branch bank with which a Municipality banks, with the sanction of the Local Government.
- (ii) 'treasury officer' includes the officer in charge of a bank.

GENERAL

1. The registers and forms prescribed in these rules provide for all classes of transactions usually occurring in Municipalities of ordinary size. But if it is found that the account rules and forms herein prescribed do not conveniently meet the special requirements of a Municipality, they may be added to or modified by the Municipal Commissioners with the sanction of the Examiner of Local Accounts in Bengal.

2. The cash and account branches of each Municipal Office shall be kept distinct from each other, and under distinct officers, who, for the purposes of these rules, will be termed, respectively, Tax-Daroga or Cashier and Accountant.

In no case shall the same person compile the Municipal accounts and superintend the collection of the rates and other Municipal income.

3. As the officer in charge of a treasury and the Vice-Chairman of a Municipality occupy the respective positions of banker and constituent (Rule 20), no person connected with the treasury shall assist in any way in collecting Municipal revenue or in posting the Municipal books.

4. The Chairman, Vice-Chairman or Secretary shall at the time of audit, cause to be produced all accounts, registers, documents and subsidiary papers which may be called for by the Local Auditor to assist him in his investigation.

5. All accounts and registers shall, as far as possible, be maintained in English. All books of account and registers shall be substantially bound and paged before being brought into use, and no accounts shall be prepared on loose sheets or in loosely bound volumes.

6. All corrections and alterations in accounts shall be neatly made in red ink, and attested by the initials of the Chairman, Vice-Chairman or Secretary. Similarly all alterations and corrections in a voucher shall be duly authenticated by the payee. *Erasures shall on no account be permitted in registers, statements, vouchers, or accounts of any description.*

SECURITY.

7. The Secretary, Accountant, Tax-Daroga, Cashier, and tax-collecting sarkars in the employ of a Municipality shall furnish such security as the Commissioners may think proper.

Nothing in this rule shall be understood to prohibit such security as the Commissioners may think advisable being taken from any other officer or servant in the employ of a Municipality.

The prescribed form* of security bond for Municipal employes is appended to these rules.

EMBEZZLEMENTS.

Loss of money by embezzlement, theft, or otherwise.

8. Whenever any loss of money by embezzlement, theft, or otherwise, is discovered, the fact shall be promptly reported by the Chairman of the Municipality to the Examiner of Local Accounts. When the matter has been fully inquired into, he shall submit to that officer a further and complete report showing the total sum of money lost, the manner in which it was lost, and the steps taken to recover the amount and punish the offenders.

No money lost by defalcation, theft, or in other similar manner, shall be written off from the accounts, except with the sanction of Government.

CLASSIFICATION OF TRANSACTIONS.

9. No change shall be made in the prescribed list of major and minor account headings without the consent of

* The additional form of security bond for Municipal employes who are allowed to give security in landed property prescribed under Notification No. 1313M., dated the 1st March 1899, is also appended to these rules.

As amended by Notification No. 348T.—M., dated 14th May 1900.