

THE
BENGAL MUNICIPAL ACT

BEING

ACT III OF 1884 (B. C.)

AS AMENDED BY

Acts III 1886, IV & VI of 1894, II of 1896, II of
1910 & II of 1914 (B. C.)

WITH

NOTES AND APPENDICES

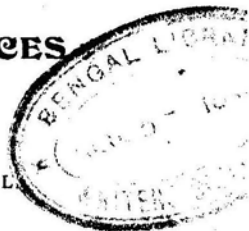
BY

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Pleader,

AND

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FOURTH EDITION:

(REVISED AND ENLARGED.)

Published by Rai M. C. SARKAR BAHADUR & SONS.

75/1/1, HARRISON ROAD AND 8/2, HASTINGS STREET,

CALCUTTA.

1916.

PRINTED BY
G C. KUNDU
At the **UNIVERSAL PRESS,**
27, Ramkrishnapur Ghat Road, Howrah.

Exp 11/9/32
Date 10.01.11

PREFACE TO THE FOURTH EDITION.

The present edition has been brought out, as the previous edition has been completely exhausted.

In this edition the amendment of the Act and notes thereunder have been brought up to date.

From the Appendix the Account Rules have been omitted; in as much as the Examiner of Local Accounts very kindly informed me that these rules were undergoing thorough revision and are about to be published in the revised form.

In bringing the book through the press, I have received very valuable assistance from Babu Sasi Bhushan Basu, B.L., and Babu Nalin Chandra Sarkar, B.L., to whom my hearty thanks are due.

HOWRAH,
September, 1916. }

B. C. D.

LIST OF ABBREVIATIONS.

App. Cas.	... Appeal Cases.
A. W. N.	... Allahabad Weekly Notes.
Beng.	... Bengal.
B. G. M.	... Bengal Govt. Municipal Circular.
Bur. L. R.	... Burma Law Reporter.
Cal. Gaz.	... Calcutta Gazette.
C. L. J.	... Calcutta Law Journal.
C. L. R.	... Calcutta Law Reports.
Cox. C. O.	... Cox's Reports; Chancery.
Crl. Rev.	... Criminal Revision.
O. W. N.	... Calcutta Weekly Notes.
East	... East's Reports, King's Bench.
E. & B.	... Ellis and Blackburn's Reports, Queen's Bench.
F. B.	... Full Bench.
Govt. Cir.	... Government Circulars (Second Edition, 1906).
" Lett.	... Government Letter.
H. L.	... House of Lords Cases.
I. L. R., Cal.	... Indian Law Reports, Calcutta Series.
" All.	... " " " Allahabad "
" Mad.	... " " " Madras "
" Bom.	... " " " Bombay "
Leg. Rememr.	... Legal Remembrancer.
L. B. R.	... Lower Burma Rulings.
L. J. Ch.	... Law Journal Chancery.
L. R. H. L.	... Law Reports, House of Lords.
L. R. Q. B.	... Law Reports, Queen's Bench.
Macq. H. L. Cas.	... Macqueen's Scotch Appeal Cases.
M. L. T.	... Madras Law Times.
My & Cr.	... Mylne and Craig's Reports, Chancery.
O. C.	... Oudh Cases.
P. R.	... Punjab Record.
P. L. R.	... Punjab Law Reporter.
Pt.	... Part.
Q. B.	... Queen's Bench Reports.
Reg.	... Regulation.
R. S. C.	... Reports of the Select Committee
Sindh L. R.	... Sindh Law Reporter.
W. R.	... Weekly Reporter.
W. R	... " " " (Eng)

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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, II of 1896, II of 1910* and II of 1914.†*

Preamble

WHEREAS it is expedient to consolidate and
amend the law relating to municipi-
palities within the territories sub-

† Act II at 1914 is the Bengal Municipal (Sanitary Officers) Act, and its object is to provide for the appointment of Sanitary officers for certain Municipalities outside Calcutta. It was published in the *Calcutta Gazette* on the 18th February, 1914. By that Act Part XIB has been inserted after Part XIA of this Act.

* Act II of 1910 is a short Act. It was published in the *Calcutta Gazette*, Part III. of the 23rd March, 1910, and is as follows.—

An Act to declare the meaning of certain words in clause
(b) of section 66 of the Bengal Municipal Act, 1884.

ject 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
commencement.

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.

Whereas certain officers were directed by the Lieutenant-Governor of Bengal, by orders issued under clause (b) of section 66 of the Bengal Municipal Act, 1884, to exercise and perform the powers and duties of the Commissioners of certain Municipalities who had been superseded by orders issued under section 65 of that Act;

And whereas the said officers in exercise of the power conferred by section 9 of the said Act on Commissioners at a meeting, recommended alterations in the numbers of the Commissioners of the said Municipalities,

And whereas the Lieutenant-Governor of Bengal thereupon, by notifications issued under sections 9 and 9A of the said Act, altered the numbers of the Commissioners of the said Municipalities, with effect from the expiration of the period for which the former Commissioners were superseded,

And whereas doubts have been raised as to whether clause (b) of the said section 66 confers upon the persons appointed thereunder any of the powers of the Commissioners which are expressed by the said Act to be exercisable at a meeting of the Commissioners,

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 1872, 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, II of 1896, II of 1910 and II of 1914, 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.

And whereas it is expedient to remove such doubts, by declaring that the said clause (b) refers to powers exercisable at a meeting of the Commissioners,

And whereas it is also expedient to give retrospective effect to such declaration, in order to validate all action taken by bodies of Municipal Commissioners constituted in pursuance of orders issued under said section 9 on the recommendation of the officers aforesaid;

And whereas, in the case of one of the Municipalities hereinbefore referred to, namely, the Santipur Municipality, the number of the Commissioners was altered by a Notification, No. 1726, dated the 2nd September, 1904, issued under section 9 of the said Act, instead of by notifications issued under both section 9 and section 9A;

And whereas it is expedient to validate the said notification;

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.

It is hereby enacted as follows —

1. This Act may be called the Bengal Municipal (Amendment and Validation) Act, 1910.

2. *Inserted under section 66 post*

3. The Notification No. 1726, dated the 2nd September, 1904, which was framed under section 9 of the said Act and published at page 202 of Part IB of the *Calcutta Gazette* of the 7th day of September, 1904, shall be deemed to be as valid as if it had been rightly framed and followed in due course by a notification framed under section 9A of that Act; and the number of the Commissioners of the Santipur Municipality, in the District of Nadia, shall accordingly be deemed to have been lawfully fixed at nine, with effect from the 2nd day of September, 1904, and shall remain at nine unless and until the number be altered hereafter by notifications published under sections 9 and 9A of the said Act.

In every enactment passed before this Act comes into force in which reference is made Saving clause. 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.

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 " Notifications " defined. to 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. Mati Lal Das*, I. L. R., 21 Cal. 837, followed in *Hira Lal Dutt v. Howrah Municipality*, Crl. Rev. No. 80 of 1909 (unreported) 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. Cf. also *Narain v. Corporation of Calcutta*, 10 C. L. J. 623.

"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., *Cal. Gaz. Pt. IV. p. 13* (Feb'y. 21, 1894.)

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., (*Boikunta Nath Dass v. Lolit Mohan 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.

Existing Muni-
cipalities.

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.

All property of late Commissioners vested in Commissioners under 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.

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

See the last proviso to section 9 which prescribes the mode in which cantonment areas are to be excluded from or included in a Municipality.

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

Definitions.

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

"Carriage"

Wheeled vehicle with springs.—*Of. Wilson v. Madras Municipality* (I. L. R., 19 Mad. 83) where a bicycle has been held to come under this class. As, however, a carriage under this Act must be drawn by animals, a bicycle cannot be a carriage. Does the use of the word “ordinarily” make any difference?

(2) “Cart” means any cart, hackery or wheeled vehicle with or without springs,
 “Cart,” 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
 “Holding.” 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.

Holding.—The basis of a holding is occupation, and the term is used with reference to land held by an occupier under one title and surrounded by one set of boundaries, *Syed Shah Hamid Hossain v. Patna Municipality*, 17 C. W. N., 812.

This definition covers arable land.—*Mohadeb Aon v. Chairman Howrah Municipality*, 11 C. L. J. 524 (5), 14 C. W. N. 85.

For the purposes of the proviso, a zemindar's kachari and his *naib's* quarters, adjoining each other, were one holding. *Gobindo v. Kailash*, 15 C. L. J. 689.

Several houses within one compound.—If such houses are distinct and form separate dwellings intended or suited for different occupants, there is no legal objection to their being treated as different holdings, provided the owner divides the compound into parts by metes and bounds and assigns to each house a separate compound which will thus be a separate set of boundaries.—*Opinion of Leg. Remembr. No. 29 - 7 Apl. 04* —(Govt. Girs., 2nd Edn. Vol. III p. 996).

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 1832-33, it appears that there was a suit instituted by one *Akhil Chandra Dhang* against the *Chairman* in the Munsif'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 *kutchra-pucra* walls. The case was decreed in favour of the plaintiff." In appeal the judgment of the Munsif was confirmed. "Hut" does not, therefore, include a structure made of *Kutchra-pucra* 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*. Compare, however, *Corporation of Calcutta v. Jogeswar Laha* (8 C. W. N. 487), where it has been held that a detached wall built of masonry is not a masonry building as defined by sec. 3 cl. (25) of the Calcutta Municipal Act (111 of 1899 B C.) It is submitted that the principle of this decision will apply here; as it seems that the term ‘building’ has been used in this definition in a sense *ejusdem generis* with hut, shop and warehouse. See also *Corporation of Calcutta v. Benoy Krishna Bose*, 15 C. W. N. 84.

See *Kamta Nath v. The Municipal Board of Allahabad*, 1. L. R. 28 All. 199 (203)

See also *Susarmoyee v. The Corporation* (7 C. L. J. 243) where a corrugated iron shed has been held to be a building within the definition given in the Calcutta Municipal Act.

(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.”

Land.—Of. *The Rangoon Electric Tramway v. The Rangoon Municipal Committee* (14 Bur. L. R. 23, 4 L. B. R. 220) in which it has been held that the tram-lines in a certain street, meaning thereby the land of the street, in or on which the Tramway

Company's sleepers and rails are laid, is *land* and the Company are the occupiers of such land.

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

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

See notes to section 121

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

(8) "The Magistrate" includes the Magistrate of the District, the Magistrate in charge of a division of the District in which division 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 ;
 "The Magistrate."

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

For the names of municipalities in Bengal see *App.*

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

(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
 "Owner"

word is used, whether from the occupier or otherwise ;

(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 ;

Includes.—The word ‘*include*’ is generally used in interpretation clauses to enlarge the meaning of words so as to make them comprehend not only such things as they signify according to their natural import but also things they are declared to include. The term “owner”, therefore, for the purposes of this Act implies not an owner in occupation but also one entitled to receive rent from an occupier or otherwise. So where a son contributed funds and helped his father in acquiring and extending a property and lived in it in the absence of his father, he was treated as an owner as having a substantial interest in the property.—*Narendra Nath Sinha v. Nagendra Nath Biswas*, I. L. R. 38 Cal. 501, 15 C. W. N. 596. See also *Emperor v. De Souza*, I. L. R. 35 Bom. 412.

A Receiver.—Appointed by the High Court is not the owner of the property of which he has been appointed receiver. He receives rent as an officer of the Court and as manager of the property on its behalf. Nor can he be made a party to any suit or proceeding without the leave of the Court appointing him, *W. B. Fink v. The Corporation of Calcutta*, I. L. R. 30 Cal. 721, followed in *Corporation of Calcutta v. Hazi Kassim Ariff*, I. L. R. 38 Cal. 714. See, however, *Corporation of Calcutta v. Administrator-General of Bengal* (I. L. R. 30 Cal. 927.) where it was held that the sanction of the Government was not necessary for the

institution of a prosecution under the Calcutta Municipal Act, section 197 of the Criminal Procedure Code not being applicable to a case of that nature, and the Administrator-General of Bengal being in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the state and in the latter capacity.

A shebait.—See *Ratendra Lal Mitter v. Corporation of Calcutta* (1 L. R. 41 Cal 104, 17 C. W. N. 1084) where it has been held that a *shebait* out of turn is not an owner.

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

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

Road and Highway

For all practical purposes this definition would appear to fit in exactly what is known as *highway* in English law. For although some English authorities have doubted whether anything but a *thoroughfare* could be a highway, such doubt has since been laid at rest, and passage, whether a thoroughfare or not, which is open to all the king's subjects is now accepted as a *highway* (1)

How a Highway is Created

A road under the Municipal Act being the same as a *highway* in English law, it is interesting to know how a *highway* is created in England.

On this subject the commentator of *Smith's Leading Cases* says,—

"Except where this is done by express enactment of the Legislature, it (a highway) derives its existence from a dedication

(1) "A Practical Guide to the Administration of Highway Law" by H. Hampton Copnall p 19 and notes to *Dovaston v Payne*, *Smith's Leading Cases*, 9th Edn. p 159

to the public by the owner of the land over which the highway extends" (p. 165).

Mr. Hampton Copuall at page 18 of his book referred to above says :—

"The highways now in use in this country have been created either—

- | | |
|----------------------------|--------------------------|
| 1. By prescription | } common law methods; or |
| 2. By dedication | |
| 3. By Acts of Parliament " | |

Of these, "prescription," observes Mr. Copnall, "is now of historical rather than of practical importance, for the Prescription Act, 1832, did not apply to highways, and so left it necessary to prove the existence of a highway from the beginning of legal memory, *i.e.*, since A. D. 1189.

"This inconvenience was evaded by raising from user a presumption of dedication by the owner of the soil (*vide* judgment by Lord Blackburn in *Mann v. Brodie*, 1885, 10 App. Cas. 378)."

It will thus be seen that, for all practical purposes, dedication remains to be the only test of a highway in England. And it is submitted that in India also the trend of authorities is in the same direction, as the following considerations will show.

Rights of Way.

Mr. Justice Wilson, in the course of his judgment in the Full Bench case of *Chuni Lal v. Ram Kishen Sahu* (I. L. R. 15 Cal. 460), was pleased to lay down as follows :—

"By the common law of England there are three distinct classes of rights of way and other similar rights. First, there are private rights in the strict sense of the term vested in particular individuals or the owners of particular tenements, and such rights commonly have their origin in grant or prescription. Secondly, there are rights belonging to certain classes of persons, certain portions of the public, such as the freemen of a city, the tenants of a manor, or the inhabitants of a parish or village. Such rights commonly have their origin in custom. Thirdly, there are public rights in the full sense of the term which exist for the

benefit of all the Queen's subjects; and the source of these is *ordinarily dedication*.

"It is unnecessary to enquire whether the mode of acquiring each of these rights is necessarily the same in all cases in England and in India. But it is, I think, important to remember that these three classes of rights exist in the one country as well as in the other" (pp. 464-5).

Public Right of Way.

From the dictum of the Full Bench, quoted above, it will appear that the origin of a public right of way is "*ordinarily dedication*"; and it is not suggested anywhere in the judgment that the law on this subject is in any way different in India from that of England.

The dictum of Mr. Justice Woodroffe is to the same effect; for his Lordship in the course of his judgment in the case of *Akhoy Kumar Ghosh v Commissioners of the Port of Calcutta* (I. L. R. 33 Cal. 1243) was pleased to lay down the law in this country as follows —

"A public right of way may be created either by Act of the Legislature or by dedication, express or presumed, by the owner of the land of a right of passage over it to the public at large" (p. 1251)

The judgment of Mr Justice Mukerji in the case of the *Chairman, Howrah Municipality v. Khetrā Krishna Mitra* (I. L. R. 33 Cal. 1290), although not directly on the public right of way accepts the same principle as applicable to this country.

Dedication.—may either be (1) *express* (2) *implied* (i. e. presumed from facts proved in evidence).

(1) *Express dedication* is made by deed. Per Mukerji J— "where the owner sets apart land for the use of the public and formally declares that such is his intention, or where he conveys land to a municipality or trustees to hold for the purposes of the public the dedication is an express one."—*Chairman, Howrah Municipality v. Khetrā Krishna Mitra* (pp. 1296-7).

Section 31 of this Act provides for this

In as much as express dedication is a matter of agreement, the terms of such dedication will naturally depend upon the construction of the agreement itself, giving rise to no further complications.

(2) *Implied dedication*, on the other hand, being a matter of presumption from evidence, requires a closer examination.

It is well settled that to constitute valid dedication in law there must be *animus dedicandi* (the intention to dedicate) on the part of the owner and acceptance on the part of the persons in whose favour the dedication is made. As, however, in the case of an implied dedication of land for the purposes of a public road, the expression of *animus dedicandi* on the one hand and acceptance on the other cannot, in the nature of things, be made in express terms, the whole thing will be a matter of inference from the conduct of the parties concerned. "An implied dedication," observed Mr. Justice Mukerji in the case of *Khetra Khishna Mitra* referred to above, "arises by operation of law from the acts of the owner and is really founded upon the principle of estoppel; it proceeds not upon the principle that a grant has actually been made, but rather on the principle that the owner having allowed the public to enjoy the user for any particular purpose is estopped from denying the right of the public to the enjoyment of such user. It is quite clear that continuous and notorious user by the public with the owner's knowledge and acquiescence for the prescriptive period will raise the presumption of a grant or dedication to the public."

Mr. Justice Woodroffe in the case of *Akhoy Kumar Ghosh*, at page 1252, has laid down that user by the public is evidence of *animus dedicandi*. Says Mr. Hampton Copnall at page 19 of his book,—“Where there is no direct evidence as to the intention of the owner, the presumption of dedication may be inferred from facts proved in evidence to the satisfaction of the jury. Presumption of dedication may be [by reason of—(1) Long uninterrupted user of a way by the public at large; (2) repair by the parish.”

“An open user as of right by the public raises a presumptive inference of dedication requiring to be rebutted; and when such

user is proved, the onus lies upon the person who seeks to deny the inference resulting from it to show negatively that the state of the title is such that no one could make a valid dedication." (*R. v. Petrie*, 4 E. & B. 737. *Smith's Leading Cases* vol. II p. 165.)

Length of user.

The time necessary to perfect a public right of way is the next question of importance. "No particular time is necessary for evidence of dedication. If the act of dedication be unequivocal, it may take place immediately. For instance, if a man build a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway."

"Eight and even six years have been held time enough wherein to presume dedication from user. Four years have been held too short a time. But all depends upon the special circumstances of each case; and the duration of the public user, which limits the rights of the owner of the soil, is not so important in this respect as the nature of the acts done by the owner of the soil, and of the adverse acts acquiesced in by him, as well as the intention indicated by those acts" (*Smith's Leading Cases*, vol II, p. 165)

"A presumption of dedication has been held to be justified by eight years' user in the case of *Rugby Charity Trustees v. Merryweather* (11 East, 375 (n) 1760), and four or five years' user in *Jarris v. Dean* (1826, 12 Q. B. 515, 3 Cox C C 262) But it is not only the duration of user that will weigh with the jury; they will consider the accompanying circumstances of the particular case", (*Copnall's Highways*, p. 19)

See also *Anderson v. Jagadamba Debi*, 6 C. L. R. 282 and *Imambundee Begum v. Sheo Dyal Ram*, 14 W. R. 199.

Whether a thoroughfare or not.

In the face of this expression it is not necessary to discuss the constitution of a highway in India. A *cul-de-sac* may obviously be a road if the public have a right of way over it.

And it has been held in the case of *Young v. Outhbertson* (1854, 1 Macq. H. L. Cas. 455) that there may be a *highway* through private property, if it has a public terminus at each end. Such terminus need not be an exit in the ordinary sense; it may be a *cul-de-sac*. *Of. Municipal Board of Bulandshahr v. Dakkhan Lal*, I. L. R. 30 All. 70.

The case of *the Municipal Commissioner of Bombay v. Mathurabasi* (I. L. R. 30 Bom. 558) decided with reference to the definition of "street" in the City of Bombay Municipal Act, may be studied with advantage in connection with this subject.

Once a highway always a highway,—is the accepted principle of the law of England. This principle, although always accepted in India also, appears to have been considerably modified by the enactment Art. 146A. in the Second Schedule of the Indian Limitation Act, whereby the limitation of 30 years has been made applicable to dispossession or discontinuance of possession of a road.

On the question as to whether and how the right of highway is affected by the operation of the law of limitation and prescription see *Sundaram Aiyar v. The Madura Municipal Council*, I. L. R. 25 Mad. 635, and *Basaweswaraswami v. Bellary Municipal Council*, I. L. R. 33 Mad. 6. See section 30 and notes thereunder.

(14) "Rubbish" means broken brick, mortar,
broken glass, kitchen or stable refuse,
"Rubbish" or refuse of any kind whatsoever 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
"Sanitary Board." name or by official designation, by the

Local Government 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 37A to 37M which provide for schemes of water-supply and drainage.

"Schedule" (15) "schedule" means a schedule annexed to this Act;

"Section" (16) "section" means a section of this Act;

"Sewage" (17) "sewage" means nightsoil and other contents of privies, drains, and cesspools;

The contents of cesspools 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.

"The Commissioners" (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.)

"Year" (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, 1876, 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 1876 and VI of 1878 were repealed by sec. 2 of this Act.

8. Except as is hereinafter otherwise expressly provided, this Act may be extended Local Government may extend Act 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 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.

Local Government shall mean the Lieutenant Governor of Bengal (sec. 3, cl. 24, *Bengal General Clauses Act, I of 1899*).

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. 28 sub-sec. (4) it may remove any name from the Second Schedule.

Notification—for definition of—see sec. 2.

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—

Notification of intention to alter limits of municipality

(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

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

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

Commissioners at a meeting.—Doubts having arisen whether an officer, appointed under section 66 cl. (b) during the supersession of a municipality, could exercise the powers under this clause, section 2 of Bengal Act II of 1910, was enacted to give such powers,—see notes to sec. 66 cl (b).

Notification —for definition of—see sec. 2.

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 :

This proviso does not exclude agriculturists altogether, *Mohadeb Aon v. Chairman, Howrah Municipality*. 11 C. L. J. 524 (6)

Provided also that whenever it shall appear, either from a general census or from special enquiries 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 I 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 second proviso; but the majority were opposed to this motion, which was therefore lost. (*Cal. Gaz. April 4th, 1894, Sup. pp. 479-88.*)

In opposing the motion of the Hon'ble Mr. Ghose the Hon'ble Mr. Bourdillon 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.*)

9A. (1) 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 the notification in the *Calcutta Gazette*, and the 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

Objection to proposed alteration may be submitted to Local Government.

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 sub-divided, 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.

Municipal Fund—what shall constitute the, see sec 67

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.

Notification —for definition of, see sec. 2.

For the number of the Commissioners of the existing municipalities see *App*

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 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 section 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 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 purpose of Chap. IX of the Indian Penal Code. In case of doubt as to whether a particular office is of a public nature or not, the appointment should be made by name.—*Beng. Gov. Munl. Cir. No. 147T.—M., 24th April 1903 Govt. Cir. Vol. III p. 1038.*

The Civil Surgeon.—It is most desirable that the Civil Surgeon of the district should be a member of the municipal committee at headquarters, and, if possible of all municipalities in the interior of the district. He cannot refuse to undertake the duties.—*Beng. Govt. Munl. No. M. $\frac{6-A}{1}$ 2, 13 Apl. 89.*

Qualifications of electors.—Paragraph 1 of this section defines the qualifications of electors in so far as age, sex and residence are concerned; and it is supplemented by section 15 which imposes what may be briefly called property and educational qualifications.—*Narendra Nath Sinha v. Nagendra Nath Biswas, I. L. R. 38 Cal. 501, 15 C. W. N. 586, 13 C. L. J. 471.*

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 "residence," 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.

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.

Rules to be laid down for election.

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 Examina-

tion 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.

The term 'rates' in this section
" Rates defined. " 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 holdings 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.

Election Rules.—See *App.*

The Authority who shall decide disputes thereunder.—See rule 29 of the Election Rules, in which the magistrate has been constituted such an authority, and the notes thereunder

Resident.—For the meaning of the word see notes to sec 14, and the Election Rule 1, cl. (d) *App.*

Year.—For the meaning of the word "year" in cl. (i) 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. It was, however, contended in the case of *Narendra Nath Sinha v. Nagendra Nath Biswas* (I. L. R. 38 Cal 501) that the intention is that the payment should be made during the year which ends at the time of the election, but no decision

was given in the case.

Paid in respect of any rates.—A person, who is not legally liable to pay municipal rate but pays it, he does not become entitled to be a voter by the mere fact of such payment, unless it is proved to have been made by a person legally liable to satisfy the municipal demand.—*Narendra Nath Sinha v. Nagendra Nath Biswas*, I. L. R. 38 Cal. 501, 15 C. W. N. 586, 13 C. L. J. 471.

Three Rupees.—This limit has been reduced in the case of most of the municipalities (see Election Rule 2).

Has paid or been assessed—means has paid or been assessed legally. So where a person, whose income is below the taxable minimum, submits to the levy of the tax, he does not thereby acquire the statutory qualification contemplated in this section.—*Narendra Nath Sinha v. Nagendra Nath Biswas*, I. L. R. 38 Cal. 501, 15 C. W. N. 586, 13 C. L. J. 471.

Occupies a holding &c.—Occupation may be either as an owner or as a tenant (see Election Rule 2, cl. iv, *App.*). It must, however, be legal and not merely physical, as that of a servant. So it has been held by the Local Government (*ML. Cir. No. 11M—the 24th February, 1916*) that students (possessing educational qualifications) who reside either in a mess or in a hostel or live with their parents or guardians in the houses of such parents or guardians are not entitled to vote under the existing law.

Holding.—See, sec. 6 cl. (3) and notes

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 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, *Sabhapat 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 Koil*, I. L. R. 22 All. 143. *Cf. The Surat City Municipality v. Ohuni Lal* (I. L. R. 33 Bom. 409) in which *Jenkins, C. J.*, has been pleased to hold that neither a suit for declaration nor for injunction at the instance of a rejected candidate lies against the municipality for the acts of the election officer over whom the municipality has no control; and *Ohunilal v. Kripashankar* (I. L. R. 31 Bom. 37) in which his Lordship has held that in the absence of malice, no suit lies against the election officer for any mistake made in good faith in determining questions that arise for his decision.

The case of *Bholaram v. The Corporation of Calcutta* (I. L. R. 36 Cal 671, 13 C. W. N. 740, 6 M. L. T. 251, 3 Ind. Cas. 341) decided under the Calcutta Municipal Act although on a different subject, may be studied here with advantage, as laying down the principle that the corporation is not liable for any action of the authorities constituted by the statute and, as such, not subject to their control. It will be observed that the *election-officer* is the creature of the rules framed by the Local Government and is not appointed by the municipality.

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.

First election of Commissioners;

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 subse-

On failure of election Commissioners to be appointed by Government.

quent 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. 3 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 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 District Municipalities Act IV of 1881, there is a provision in sec. 19 that the Governor in Council may remove a Commissioner if his continuance in office is dangerous to public peace or order, or likely to bring the administration into contempt. See also *Chelva Perumal v. The Secretary of State*, 7 M. L. T. 245.

The principle of the ruling in *Queen v. Smith*, 5 Q. B. 623, that an incumbent, having in the contemplation of law a freehold 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 ineligibility 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 1886 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 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 Com-

missioner shall be disqualified under cl. (c) by efflux of time, but this objection was overruled.

Cl. (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 (*Gooroo Prosad Sen v. O. J. S. Fouldes and another*, suit No 92 of 1889 in the Court of the Third Sub-Judge at Bankipore, 11th April 1890, see *The Behar Herald and the Indian Chronicle*, 19th April 1890.)

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.

▲ 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*).

21. Every Commissioner shall vacate his office
Tenure of office of Commissioner at the end of three years from the
 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*)

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 (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.

Certain Commissioners not to be elected or re-elected without consent of 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 clss (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 Chairman

(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 Cir. No. 34M—The 27th August 1894, para 9. By sub-sec. (3) an appointed Chairman may be removed by the Local Government; but an elected Chairman only 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 para. 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.

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

Status and tenure
of office of Chair-
man.

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 Commissioner 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

Three years.—See SECS. 26 and 26A.

A resolution under paragraph 3 requires confirmation by the Local Government under section 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 the
Vice-Chairman.