Provided that both the taxes shall not be in force at the same time in the same ward.

Changes.

By sec. 34 of Beng. Act IV of 1894 the word "or" has been substituted for "but not" in the first paragraph, and the words "Howrah, Patna" and the last proviso have been added, and the word "all" which stood before the word "holdings" in cl. (*b*) has been omitted.

Notes.

Scope of the first change.—The substitution of the word 'or' in the first paragraph has made a material change in the law. Hitherto one form of taxation only, either the tax on persons or a rate on the valuation of holdings, could be enforced in a municipality, but now with the sanction of the Local Government the Commissioners at a meeting may impose both the taxes within the limits of one and the same municipality with this restriction that they shall not be levied at the same time in the same ward. So 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—*See Govt. Lett. para.* 18 *App. p.* 9*a*.

Object thereof.—The object of this change was set forth in the following words of the Hon'ble Mr. Surendra Nath Banerji, who moved the amendment :—

"In every municipality, however poor it may be, there is a section of the people who are rich and dwell in fine houses, and they generally congregate together. Now the highest tax upon any one holding in a municipality where the tax upon persons prevails is Rs. 84 a year; a person may live in a palatial dwelling, he may have a whole village included in his dwelling-house, but if it is one holding he pays Rs. 84, and no more."—*See Cal. Gaz. 25th April* 1898 *p.* 695.

Objections thereto.—This principle of taxation was, however, as was pointed out by the Hon'ble Mr. Collier in the Council, condemned by English Judges in the well-known case of Sir

Antony Earby in which "it was held that assessments of rates must be one and equal in proportion to the property of the assessees, and that they must be made in an equal manner." There should be one method of assessment which will affect all occupiers fairly and equally.—*See Cal. Gaz. 25th April* 1894, *p.* 698.

The Hon'ble the Advocate-General said, "I look upon the first of these taxes,—the tax upon persons according to their circumstances, as a very dangerous mode of taxation, and one which is liable to much abuse. The tax upon persons is an unfair tax, but to allow the Commissioners power to enforce both in the same municipality would be to arm them with greater powers than should be given." *Ibid, p.* 698.

Tax by whom payable.—The tax upon persons is payable by the *occupiers* of holdings (sec. 87), and the rate on holdings by the *owners* thereof (sec. 103), and under some circumstances by the occupiers (sec. 105).

Occupier.—A *naib* of a zemindar occupied a house adjoining the *kachari* of his master, and in that house, he carried on business on behalf of his master, but paid no rent. It was *held* that the zemindar and not the naib was the occupier and liable for payment of tax, *Govinda* v. *Kailash*, 15 C. L. J. 689.

Holdings.—*See sec. 6 cl. (3).* Adjoining holdings, forming part and parcel of the site or premises of a dwelling-house &c., shall not be deemed as one holding for the purpose of imposing a tax upon persons.

A zemindar's *kachari* and his naib's quarters, adjoining each other, were one holding for the purposes of assessment, *Gobinda* v. *Kailash*, 15 C. L. J. 689.

Tax upon persons.—*The tax upon persons is to be imposed according to their circumstances and property within the municipality.* The absence of a standard for ascertaining the circumstances of the assessee may often lead to abuse of power. For instance, the attention of the Hon'ble the Advocate-General was drawn to a case in which a municipality went so far as to assess a

poor woman to pay the tax, the reason assigned being that she had a violent temper and was very abusive. The Hon'ble the Legal Remembrancer said that "the Bengal municipalities possess no powers and possible means of making proper inquiries as to the circumstances and condition of the individual to be taxed."—*Cal. Gaz.* 25*th April* 1894, *p.* 700. See notes under sec. 87.

Conditions of assessment.—Two conditions are imposed by this section for assessing this tax:—(1) the occupation of a holding or holdings *within* the municipality, and (2) conformity of the taxation to the circumstances and property of a person *within* the municipality. It is therefore illegal to assess the tax on the bases of the circumstances and property of a person *outside* the local limits of the municipality, *Kameshwar Pershad* v. *The Chairman of Bhabua Municipality*, I. L. R. 27 Cal. 849. Both the "circumstances" and the "property" referred to in this section must be within the municipality in question.—*Deb Narain Dutt* v. *Chairman of the Baruipur Municipality*, I. L. R. 39 Cal. 141. This view was affirmed in the Letters Patent appeal in the same case, I. L. R. 41 Cal. 168 19, C. L. J. 205. A Deputy Collector, drawing a salary of Rs. 300 and occupying holdings within a municipality, being assessed to the tax on the basis of his salary, objected to the assessment and refused to be assessed except on the basis of the sums spent by him within the municipality. The High Court *held* that the assessment was rightly made and that "the circumstances and property" meant the whole amount he earned, and not what he spent, within the municipality, *Chairman of Giridih Municipality* v. *Srish Chandra Mojumdar*, I. L. R. 35 Cal. 859, 7 C L. J. 631, 12 C. W. N. 709. Then again persons living with a particular individual occupying a holding by reason of some connection with or relation to him, such as sons or servants, would not be separately assessable, by reason of possessing separate incomes. It has, however, been observed in this case that there may be circumstances in which more persons than one may occupy a particular holding *jointly* making each of themselves assessable, *Ambica Churn Muzumdar* v. *Satish Chunder*

Sen, 2 C. W. N. 689. See also *Municipal Council, Coconada* v. *Standard Life Assurance Co.*, I. L. R. 24 Mad. 205.

In the *Burrisal case* it was contended on behalf of the municipality that the plaintiffs were liable to assessment by reason of their employing as their *Ammuktar* or agent, a person who occupied a holding within the municipality, notwithstanding that that holding belonged to another person for whom the *Muktar* also acted as an agent, and who had already been assessed in respect thereof. But the High Court held that upon the facts found the plaintiffs did not occupy the holding, *Chairman of the Burrisal Municipality* v. *Adya Soondri Mitra*, I. L. R. 21 Cal. 319. Where the *naib* of a Zemindar resided on a holding solely to carry on the business of the Zemindar whose representative he was, and who paid the rent therefor to the superior landlord, it was *held* that the Zemindar and not the *naib* must be regarded as the occupier and liable for the payment of the tax, *Gobinda Chandra* v. *Kailas Chandra*, 2 C. L J. 60*n*.

Burden of Proof —The burden of proving the value of "the circumstance and property within the municipality" is on the municipality, I L. R 41 Cal (L. P.) 168, 19 C L J. 205.

The following opinion of the Legal Remembrancer (Gov Cir, vol. III p. 1003) on this matter may be studied with advantage :— I think all persons occupying holdings are liable to tax on persons under section 85. This includes persons occupying independently and singly as well as those holding jointly and the circumstances of each person are to be separately considered. The initial condition of liability to taxation is occupation of a holding, but the measure of taxation is not the value of the holding but "the circumstances and property within the municipality" of that person.

"The difficulty arises as to what "occupation" means. If A and B, jointly rent a holding, both paying parts of the rent, they are both liable to tax. But if A is the sole owner or tenant, and B, his relation or friend is permitted by A to share the house with him, *i.e.*, live in it without payment of rent, A retaining full control of the premises, then B is not liable to taxation. Joint-

proprietors or joint-tenants are separately liable to taxation, each according to the circumstances and his properties (or shares of properties) within the municipality.

"The maximum of Rs. 84 per annum may be applied separately to each person holding jointly, so if A and B jointly occupy a holding each may be taxed Rs. 84 for his joint occupation of that holding. To hold otherwise would be to construe the tax on persons as if it was a tax on holdings and to nullify the words "according to his circumstances."

Sec. 3 of India Act XI of 1881. (The Municipal Taxation Act) authorizes the Governor General in Council to prohibit the imposition of any specified tax payable by military officers residing within the limits of a municipality on duty or by the Secretary of State in Council. *See App.*

Seeond change.—Howrah and Patna have been included in the first proviso, so that the rate on holdings may be raised to ten per cent on the annual value in those places.

Rate on holdings.—The annual value of a holding is ordinarily to be assessed according to the gross annual rent at which a holding may be reasonably expected to let, but in case of buildings standing thereon it must not exceed an amount equal to seven and a half per centum on the cost of erection of such buildings, where the cost can be ascertained or estimated, plus a reasonable ground rent for the land comprised.—*See sec.* 101 *and notes.*

Revenue Laws—There is no exemption in favour of revenue paying estates within a municipality. The mere circumstance that lands assessed form part of a revenue-paying estate is no ground for exemption, *Syed Shah Hamid Hossain* v. *Patna Municipality* 17 C. W N., 812, 17 C. L. J. 131. 117

Arable Lands—are not exempted from the payment of this rate *Mohadeb Aon.* v. *Chairman Howrah Municipality*, 11 C. L. J. 524, 14 C. W. N. 857.

Holdings valued less than six rupees—Such holdings are not exempted from payment of latrine tax, see opinion of Leg. Rememr. (Govt. Cir. vol. III *p.* 1000).

Annual value—*Per Wilson J.*, "In the English Rating Acts *annual value* has always been held to mean annual letting value". *Nundo Lal Bose* v. *The Corporation of Calcutta*. I. L. R. 11 Cal. 275 Cf. *Fleming* v. *The Municipal Committee of Simla*, (46 P. R. 1910) where it has been held that when municipal taxes are paid by the tenant to the landlord (of a house at Simla), such taxes should be considered as forming part of the gross annual rent or annual value, on which house-tax may be levied under sec. 42 of the Punjab Municipal Act (1891).

Owner.—See sec 6 cl. (11).

Preliminaries for imposition of taxes:—(1) A resolution at a meeting *convened expressly for the purpose* and (2) *sanction* of the Local Government.

Additional taxes

86. The Commissioners may, from time to time, at a meeting convened as aforesaid, and with the sanction of the Local Government, order that the following tax, fee, tolls and rates, or any of them, be levied within the limits of the municipality in addition to either of the taxes mentioned in the last preceding section :—

(*a*) a tax on carriages, horses and other animals named in the fifth schedule ;

(*b*) a fee on the registration of carts ;

(*c*) tolls on ferries and (subject to the provision of sections 158 and 159) tolls upon bridges and metalled roads ;

(*d*) a water-rate not exceeding seven and a half per centum on the annual value of holdings when the houses and lands are situated in streets supplied with water, and not exceeding six per centum when

the houses and lands are situated in streets not so supplied;

(*e*) a lighting-rate not exceeding three per centum on such annual value;

(*f*) a fee for the cleansing of latrines:

Provided that the taxes mentioned in clauses (*d*), (*e*) and (*f*) shall not be levied in any municipality unless the provisions of Part VII in respect of clause (*d*), or of Part VIII in respect of clause (*e*), or of Part IX in respect of clause (*f*) shall have been extended wholly or partly to such municipality in manner hereinafter provided.

Change.

The words "seven and a half" and "six" have been substituted for "six" and "five" respectively in cl. (*d*) by sec. 35 of Beng. Act IV of 1894.

Notes.

Special meeting.—The meeting contemplated by this section is to be convened expressly for the purpose after due notice being given.—*Compare sec. 85, also Strachey* v. *The Municipal Board of Cawnpore*, I. L. R. 21 All. 348.

Omission.—The words "privies and cesspools" should have been substituted for "latrines" in cl. (*f*). This, however, seems to be an oversight. *See sec. 320 and notes thereunder.*

Of the Tax on persons.

Assessment list to be prepared

87. When it has been determined that a tax shall be imposed on persons occupying holdings within the municipality, according to their circumstances and property, the Commissioners, after making such enquiries as may be necessary, shall cause to be prepared an assess-

ment list which shall contain the following particulars, and any others which the Commissioners may think proper to include :—

(*a*) name of the street or road in which the holding is situated;

(*b*) number of the holding on the register;

(*c*) name of the person occupying the holding, whether such person be assessed or exempted from assessment;

(*d*) description of the holding, and of the property within the municipality, and the profession or business of the person assessed;

(*e*) amount of annual assessment;

(*f*) amount of quarterly instalment;

(*g*) if the occupier of the holding is exempted from assessment, a note to that effect.

The tax upon persons shall be payable in quarterly instalments by persons occupying holdings.

Such tax shall not be assessed or levied on any person in respect of the occupation of any building which is used exclusively as a place of public worship, or in respect of the occupation of any public burial or burning ground registered under section 254.

Changes.

By sec. 36 of Beng. Act IV of 1894 the words 'of arable lands or' in the last paragraph have been omitted, and in the same paragraph the words beginning with 'or' and ending with '254' have been added.

Notes.

Object of the change.—These alterations, have been made with the object of making the provisions in respect of the rate on holdings and the tax on persons similar. In assessing the tax on persons, arable land may, therefore, be taken into account. See *Mohadeb Aon* v. *Chairman Howrah Municipality*, 11 C. L J. 524 (527).

The following reasons led the legislature to make occupiers of arable lands liable to pay the tax on persons under sec. 85 :—

(1) To bring practice into conformity with law, it being always the practice with municipal Commissioners to take into consideration the quantity of land, which a person cultivates, in order to ascertain his circumstances and property within a municipality, for the purpose of assessment of a tax on persons, even though such lands have hitherto been, by law, exempted from such taxation.

(2) To prevent such lands from escaping taxation both under the Road Cess Act and this Act—*Cal Gaz 25th April* 1894, *pp* 702-703.

Person.—shall include any company or association or body of individuals, whether incorporated or not, *sec.* 3 *cl.* 32, *Beng. General Clauses Act I of* 1899.

Circumstances.—This word was not introduced in sections 85 and this section to restrict the term property; the intention of the Legislature seems to have been, on the other hand, to widen the scope of the section so as to make taxable what might not be properly comprised under the term "*property*" and at the same time ought not to escape assessment, *Srish Ch. Mozumdar's case*, I. L R. 35 Cal. 859.

Property—as a subject of taxation without any qualification includes both real and personal property or estate and intangible as well as tangible rights of value. "Circumstances" and "property" put together in the section without any qualification mean unquestionably the whole income, *Ibid*.

Conditions of assessment.—In assessing this tax the circumstances and property of a person *within* the municipality

should only be taken into consideration. An assessment based upon a person's circumstances and property *partly within* and *partly without* the municipality is illegal, *Kameshwar Pershad* v. *The Chairman of Bhabua Municipality* I L. R. 27 Cal. 849. See also notes to sec. 85. In the case of an officer of Government earning a salary within a municipality the basis of assessment was held to be the whole amount of his salary and not what he spent within the municipality, *Chairman of Giridih Municipality* v. *Srish Chandra Mozumdar*, I L. R 35 Cal 859, 7 C. L. J. 631, 12 C. W. N. 709.

Duration of assessment

88. Save as herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by sec. 112 is published, and shall be valid for three years and until the beginning of the year next after the date on which a new assessment or valuation may be published, or until the assessment and valuation be revised and amended :

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice shall be published.

Assessment of public buildings

89. In any municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which contains any building the property of Government or of a local authority, but a rate not exceeding seven and a half per centum may be assessed on the annual value of

every such holding, to be ascertained in the manner prescribed by section 101, and such rate shall be payable by Government, or the local authority, concerned.

Changes.

By sec 37 of Beng. Act IV of 1894 the words "contains any building" have been substituted for "is" after "which." By the same section the words "of a railway administration or of a local authority" were substituted for "and used for the purposes of a public building" and the words "or the railway administration or local authority concerned" were added at the end. But in as much as the levy of taxes from a railway administration is regulated exclusively by sec. 135 of the Indian Railways Act IX of 1890, the words "of a railway administration" and "or the railway administration" have been omitted by sec. 2 of Beng. Act VI of 1894

Notes.

Beng. Act VI of 1894 was published in the *Calcutta Gazette*, the 10th October, 1894, with the assent of the Governor-General on the 3rd October 1894

Taxation of Railways —Sec 135 of Act IX of 1890 (Indian Railways Act) runs as follows —

"Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railway and from railway administrations in aid of the funds of local authorities, namely :—

Taxation of railways by local authorities

(1) A railway administration shall not be liable to pay any tax in aid of the fund of any local authority, unless the Governor-General in Council has by notification in the Official Gazette, declared the railway administration to be liable to pay the tax

(2) While a notification of the Governor-General in Council under clause (1) of the section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification, or, in lieu thereof, such sum, if any,

as an officer appointed in this behalf by the Governor-General in Council may, having regardto all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor-General in Council may at any time revoke or vary a notification under clause (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering, or be prepared to render within any part of the local area under its control.

Local authority in this section means a local authority as defined in the General Clauses Act, 1897, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchman, or for the conservancy of a river.

No. 54 R. DATED CALCUTTA, THE 9TH JANUARY 1908.

Endorsed by—The Government of Bengal, Railway Department.

The undermentioned document is forwarded to the Municipal Department of this Government for information and guidance, in continuation of this office endorsement No. 98 R. dated 18th January 1901

No. 1630 R. T., DATED CALCUTTA, THE 23RD DECEMBER 1907.

Memo. by—The Secretary, Railway Board.

The undermentioned paper is forwarded to the Local Governments and administrations and to the officers noted on the margin for information, with the remark that should any Railway Administration consider any particular tax or assessment unreasonable or disproportionate to the services rendered, the procedure indicated in paragraph 10 of the Govt. of India, Public Works Department, letter No. 20 R. T, Dated the 7th January 1901, copy forwarded under memorandum No. 21 R. T., of same date, and paragraph 20 of Public Works Department Resolution No. 434 R. T., dated the 17th August 1894, should be followed.

The necessary portion of paragraph 10 of letter No. 20 R. T., of 7th January, referred to above, is as follows :—

"(*i*) the taxes, if any, imposed by municipal authorities upon railway administrations or communities should be in proportion to and for services rendered, and

"(*ii*) where no services are rendered, it should not be competent for municipal authorities to enforce taxation.

"As regards (*i*), if a railway administration considers any tax disproportionate to the services rendered, the procedure laid down in paragraph 2 of the Public Works Department Resolution No. 434 R. T., dated the 17th August 1894, should be followed."

Paragraph 2 of the Resolution referred to above runs as follows :—

"2. Should any Railway Administration, however, consider that any particular tax, or its assessment, is unreasonable or disproportionate to the services rendered, the Governor-General in Council is pleased to decide that an application for the revision of such tax or assessment should be made direct to the Commissioner in charge of the division, in which the tax is levied, or where there is not such a Commissioner, to the officer holding a position corresponding to that of a Commissioner (*e.g.* the Collector in the Presidency of Madras, or the Deputy Commissioner in Sylhet or Cachar), who is hereby appointed under section 135, sub-section 2 of the Indian Railways Act, 1890, to enquire specially into all the circumstances of the case and determine, in communication with the contending parties the sum, if any, which should be paid".

No. 9977 Rys., Dated 29th November 1907.

Notification—By the Government of India, Department of Commerce and Industry.

In pursuance of clause (*i*) of section 135 of the Indian Railways Act, 1890 (IX of 1890), and in supersession of the notifications of the Government of India in the Public Works Department, No. 270,

dated the 12th June 1890, and No. 136, dated the 5th April 1893, the Governor-General in Council is pleased to declare that every Railway Administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force

Non-liability to pay tax.—As to prohibition to the levy of municipal taxes, in certain cases on persons, on military duty and the Secretary of State, see The Municipal Taxation Act, 1881, *App.*

Procedure if aggregate amount of rates assessed on any person exceeds Rs 84 per annum

90. Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four rupees per annum, such person may, within fifteen days of the publication of the notice required by section 112, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him, in respect of the said holdings, a rate to be calculated at seven and a half per centum on the annual value of such holdings; and the Commissioners shall thereupon substitute such rate; and, for the purpose of calculating the amount of such rate, shall determine the annual value of the said holdings in the manner prescribed by section 101.

Every rate imposed under this section shall be payable by the occupier of the holding so rated.

Note.

By the law as it now stands the tax on persons as well as the rate on holdings may be in force in one and the same municipality

(sec. 85). Now, if the tax on persons be imposed in any portion of the municipality in which the rate on holdings is levied at more than seven and a half per centum under the proviso to sec. 85, a substitution of the rate on holdings under the provisions of this section will involve an anomaly, the maximum tax leviable under this section being seven and a half per centum only.

Power of exemption

91. The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment-list, whether he be assessed or exempted from assessment.

Note.

Under this section the Chairman of a municipality may exempt any person from assessment, but the exemption under sec. 106 has to be made by a resolution of the Comissioners at a meeting. It is hard to reconcile this difference.

Power to apply for reduction of assessment in altered circumstances

92. If any person mentioned in the assessment-list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct.

Note.

A person, dissatisfied with the amount assessed upon him, may apply for review under sec. 113.

Power to alter assessment.

93. The Commissioners may, at any time after the publication of the notice required by section 112, assess any person who was without authority omitted from the assessment-list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud.

Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

Notes

Compare sec. 108. It will appear that the words "and to have been so made owing to" in this section have evidently been used in the sense in which the word "through" has been used in sec. 108. The Commissioners cannot, therefore, enhance any assessment under this section unless mistake or fraud is proved.

Splitting of one holding into two and assessing them separately after a year of the general assessment when they had been treated as one holding, is not a case of enhancement of assessment, but of fresh assessment and this section does not authorise such a procedure, *Navadip Chandra Pal* v. *Purnananda Saha*, 3 C. W. N. 73.

Procedure on change of occupation.

94. The Commissioners may at any time substitute for any name mentioned in the assessment-list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced.

95. If any holding shall become vacant in course of the year, the assessment on account of the occupation of such holding shall cease to have effect from the first day of the quarter next following that in which it became vacant.

Assessment on vacant holdings when to cease.

Of the Rate on the value of Holdings.

96. When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such enquiries as may be necessary, shall determine the valuation of all holdings within the municipality as hereinafter provided.

Commissioners to determine the valuation of holdings.

Holding—defined in sec. 6 cl. (3).

All holdings.—Note the word *all*. Holdings consisting of arable lands cannot therefore be exempted. *Mohadeb Aon* v. *Chairman Howrah Municipality*, 11 C. L. J. 524 (527).

See sec. 101.

97. Save as is herein otherwise provided, such valuation shall be valid for five years from the date on which it first takes effect in the municipality, and until the beginning of the year next after the date on which a new valuation may be made, or until the valuation be revised and amended.

Duration of assessment.

The word "five" has been substituted for "three" by sec. 38 of Beng. Act IV of 1894.

For definition of "year" see sec. 6 cl. (19.)

97A. If within the period prescribed in the last preceding section the percentage on the valuation of holdings at which

Effect of alteration of percentage.

the rate is to be levied is altered by the Commissioners under the provisions of section 102, the amount of the rate and the amount of the quarterly instalments thereof payable in each case shall be altered accordingly in the rating list, but the Commissioners shall not thereby be deemed to have made a new or revised assessment list.

This section has been added by sec. 39 of Beng Act IV of 1894.

Notes.

Under the provisions of sec. 102 the tax payable according to the alteration of percentage shall take effect from the beginning of the year next following that in which the percentage has been altered.

The duration of a new or revised assessment under sec. 97 is five years, but it is not so in the case of the alteration of percentage under this section. It remains in force only till the expiration of five years from the date of the new or last revised assessment.

Buildings exempted from tax.

98. The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under sec. 254.

Exemption of charitable holdings from assessment.

The Commissioners at a meeting may, with the sanction of the Local Government, exempt from assessment any holding for purposes of public charity.

Change.

The second paragraph of this section is new and has been added by sec. 40 of Beng. Act IV of 1894.

Note.

Holding—defined in sec. 6 cl. (3.)

Used exclusively.—In a case refetred by the Bally Municipality to the Hon'ble the Advocate-General for his opinion, he recorded that "if the lands form one holding as described by the Act, it is necessary that the whole holding should be used exclusively as a place of public worship and therefore there must either be a total exemption or an assessment of the whole; there can be no partial exemption."

From the above opinion of the Hon'ble Advocate-General it is clear that there can be no exemption of a holding, part of which is used exclusively for the purposes of *public worship* or *public charity* and the remaining part is used for other purposes; nor can there be a partial exemption and partial assessment of one and the same holding.

In the same case the Hon'ble the Advocate-General was also of opinion that if a deity, which is not an object of worship by such an important section of the Hindu community as the Brahmins, by reason of its consecration by a Sudra in his own name, is located in a holding, such a holding cannot be said to be used exclusively as a place of public worship—*In the matter of the assessment of the Thakurbaree of Purna Chundra Dawn, dated 11th Sept. 1891.*

Conditions of exemption.—In order to claim exemption under this section it must be established (*a*) that it is a holding as defined in sec. 6 cl. (3), (*b*) that it is used as a place of public worship or for purposes of public charity, and (*c*) that the *whole* of it is used *exclusively* for any of those purposes.

In Madras certain buildings, the property of Government lent to certain persons free of rent for being used exclusively for the purposes of a college, which was not a proprietary institution managed by the conductors for their own benefit, but was purely a public institution, were assessed for municipal taxes. The High Court held that the tax was illegal, *Fischer* v. *Twigg*, I. L. R. 21 Mad. 367.

Other rates.—This section applies to water-rate (sec. 280) and lighting-rate (sec. 311.)

What returns may be required for ascertaining annual value.

99. The Commissioners, in order to prepare the valuation-list, may, whenever they think fit, by notice, require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof; and the Commissioners, or any person authorized by them in writing in that behalf, at any time between sunrise and sunset, may enter, inspect and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof;

Provided that where an assessor is appointed, such assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding.

Change.

The words "in writing" and the proviso have been added by sec. 41 of Beng. Act IV of 1894.

Notes.

Government Buildings.—Officers entrusted with the duty of looking after the interests of Government in matters of assessment of several classes of such buildings.—See *Munl. Cir. No. 5—6 M, 30 Jany. 93* (Govt. Cir. Vol. III *pp.* 997-8).

The object of adding this proviso is to prevent levying of blackmail, and to make the special officer appointed for the particular purpose responsible. (*Cal. Gaz. April* 25, 1894, *Sup. pp.* 703-4).

As to appointment of assessor see sec. 111A.

As to the time within which the return is to be furnished and penalty for default therein see sec. 100.

Penalty for default in furnishing return.

100. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required to do so, or knowingly makes a false or incorrect return, shall be liable to a fine not exceeding twenty rupees, and to a further daily fine not exceeding five rupees for each day during which he shall omit to furnish a true and correct return; and whoever hinders, obstructs or prevents any Commissioner, or any person appointed by the Commissioners as aforesaid, from entering, or inspecting or measuring any such holding shall be liable to a fine not exceeding two hundred rupees.

Daily fine—in addition to a substantive fine is bad in law (See notes to sec. 218.)

Annual value of holding how to be ascertained

101. The gross annual rent at which any holding may be reasonably expected to let shall be deemed to be the annual value thereof, and such value shall accordingly be determined by the Commissioners, and entered in the valuation-list:

Provided that, except in the Darjeeling Municipality, if there be on a holding any building or buildings, the actual cost of erection of which can be ascertained or estimated the annual value of such holding shall in no case be deemed to exceed an amount which would be equal to seven and a half per centum on such cost, in addition to a reasonable ground-rent for the land comprised in the holding;

Provided also that, where the actual cost so ascertained shall exceed one lakh of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one lakh of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 102:

Provided further that, in estimating the annual value of a holding under this section, the value of any machinery that may be on such holding shall not be taken into consideration.

Change.

The words "except in the Darjeeling Municipality" have been added by sec. 42 of Beng. Act IV of 1894.

Notes.

Proviso 1.—"The proviso in sec. 101 is imperative;—where there are buildings the *actual cost* must be *ascertained* or *estimated*. It has been contended that the word 'actual' being emphasized, the word 'estimated' must be treated as surplusage or as being no more than 'ascertained;' because in ordinary language an *actual cost* cannot be *estimated* and that the word applies to aproximate or probable cost. The Legislature has however used the word 'estimate,' and we must endeavour if possible to give a meaning to it. I am of opinion that 'actual cost' means no more than 'cost,' and that the Legislature intended that the cost should be ascertained if practicable and where that is not practicable it should be estimated."—*Opinion of the late Advocate-General (Sir G. Paul), dated the 17th March, 1887 on the assessment of the E. I. Railway, Howrah.*

Calculations.

Proviso (1)

The maximum annual value = reasonable ground rent + $7\frac{1}{2}$ per cent. on the cost of erection.

The annual rate = the percentage determined under sec. 102 on maximum annual value.

Proviso (2)

The maximum annual value = reasonable ground rent + $7\frac{1}{2}$ per cent. on the first lakh of the cost of erection + $7\frac{1}{2}$ per cent. on the cost exceeding the first lakh.

The annual rate = the percentage determined under sec. 102 on ground rent + the same percentage on the valuation on the first lakh + one-fourth of the same percentage on the valuation on the amount exceeding the first lakh of the cost of erection.

The Darjeeling Municipality.—has been excepted from the operation of the first proviso, the reason assigned being that the cost of construction of houses there is extremely low and the expenditure of the municipality extremely high. The assessment of holdings within that municipality shall, therefore, in all cases be in accordance within the annual letting value.—Cal. Gaz., 25th April, 1894, Sup. *p.* 704.

Annual letting value.—See *the Secretary of State* v. *The Madras Municipality* I. L. R. 10 Mad. 38; *Nanda Lal Bose* v. *The Calcutta Municipality*, I. L. R. 11 Cal. 275, and notes under sec. 85.

Determination of rate of tax on holdings.

102. Subject to the provisions of section 85, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other

percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year:

Provided that, when this Act is first extended to any place, the first rate may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

For the definition of 'year' see sec. 6, cl. (19).

Preparation of valuation and rating list.

103. As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars, and any others which the Commissioners may think proper to include:—

(*a*) name of the street or road in which the holding is situated;

(*b*) number of the holding on the register;

(*c*) description of the holding;

(*d*) annual value of the holding;

(*e*) name of owner;

(*f*) amount of rate payable for the year;

(*g*) amount of quarterly instalment;

(*h*) if the holding is exempted from assessment, a note to that effect.

The rate upon holdings shall be payable in quarterly instalments by the owner of the holding.

Notes.

Apparent conflict between this and the preceding section.—At first sight it may appear difficult to reconcile sec. 102 with sec. 103. Sec. 102 says that a percentage fixed shall remain in force until expressly rescinded or altered; whereas sec. 103 appears to require that, in the preparation of the valuation and rating list, the percentage, at which the rate is to be levied *for the year in which the valuation and rating list is to come into force, should be fixed under the preceding section before the close of the year next preceding.* It is, however, unreasonable to construe two sections of an Act so as to lead to conflicting conclusions. If the Legislature had intended that the procedure of sec. 102 is to be repeated each time that a new valuation is to be made under sec. 97, it would have said so expressly, instead of laying down the clear rule that a percentage once fixed under the provisions of that section shall remain in force until altered. The intention of the Legislature appears, therefore, to be that the percentage, fixed under sec. 102 before the close of a year, applies not only to the rate to be levied for the immediately following year, but for every succeeding year until it is altered; so that, when a new valuation is to come into force under the provisions of sec. 97 in any particular year, the percentage applicable or the percentage, at which the rate is to be levied under the new valuation, will refer back to the percentage last fixed under sec. 102, which must be deemed to have been determined not only for the year in which it was originally fixed, but for all succeeding years including the one immediately preceding the new valuation.

Cl. (*a*)—This provision is purely ancillary and incidental, and it would be absurd to allow the bare allusion in it to streets or roads to have any effect upon the general scope of the enactment, *Mohadeb Aon* v. *Chairman Howrah Municipality*, 11 C. L. J. 524 (6).

There is nothing to prevent a parcel of arable land from lying alongside (and, so to speak, *in*) a road, and even if it were not actually so situated, there would be nothing incongruous in describing it in a municipal register as being "in the road" to which access from it is available, *Ibid.*

Government Buildings.—As to payment of taxes of different kinds in respect of such buildings occupied as residences, see Government orders (Govt. Cir. Vol. III. *pp* 998-9).

As to holdings exempted from taxation see last proviso to sec. 85, and secs. 98 and 106.

Owner.—for definition see sec. 6 cl. (11) and notes thereunder. The term in this section means the person above the occupier, if the occupier is not the owner, *Syed Shah Hamid Hossain* v. *Patna Municipality*, 17 C. W. N. 812.

This rate may be recovered from the *occupier* in certain cases, see sec. 105.

Power to assess upon house consolidated tax for house and land on which it stands

104. If any house belongs to one owner, and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may value such house and land together and may impose thereon one consolidated rate.

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

If the owner of the house and the owner of the land do not agree in respect of the proportion of the rate so deducted by the owner of the house, the Commissioners shall, on the application of either party, make an award declaring the amount payable by each, and such award shall be final.

Notes.

As to definitions of the terms "house" and "owner" see sec. 6 cls. (4) and (11) respectively.

Tax due from non-resident owner may be recovered from occupier and deducted by him from his rent

105. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him:

Provided that no arrear of rate which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof.

Note.

Resident.—The word "resident" in this section would appear to have been used in its ordinary sense. When an owner, therefore, does not ordinarily reside within the limits of a municipality the rate may be recovered from the occupier. Compare sec. 14 and notes thereunder.

Owner.—For definition see sec. 6 (11) and notes.

Power of Commissioners in cases of excessive hardship.

106. Whenever, from the circumstances of the case, the levy of the rate on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

Compare sec. 91 and notes thereunder.

Application for reduction of assessment.

107. If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

The law does not prescribe the procedure for the disposal of any application under the section. Probably the decision will rest with the Chairman.

Power to revise valuation and assessment

108. The Commissioners may, at any time after the publication of the notice required by section 112, value and rate any holding which was without authority omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight or fraud; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

Re-value and re-assess.—For an explanation of these terms, see *Secretary of State* v. *Belchambers*, I. L. R. 33 Cal. 396 (404-5).

Mistake, oversight or fraud seems not to include want of proper judgment. Compare sec. 93 and notes thereto.

Power to revise assessment list.

109. The Commissioners may, at any time, substitute for any name mentioned in the valuation and rating list, the name of any person to whom any holding mentioned therein shall have been transferred.

Such person shall be liable to pay the rate payable on such holding from the first day of the quarter next after the date of the transfer.

Remission or refund on account of vacant holdings.

110. When any holding has been vacant for sixty or more consecutive days during any year, the Commissioners shall remit, and, if the rate has been paid, shall refund, one-half of so much of the rate of that year as may be proportionate to the number of days the said holding has remained unoccupied:

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

The amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice

Notes.

Vacancy of arable land.—In the case of *Mohadeb Aon* v. *Chairman, Howrah Municipality* (C. L. J. 524), **Carnduff J.**, was pleased to observe as follows:—"We are not prepared to concede that it (this section) is inapplicable, but should rather hesitate to hold that the benefit of the provision could not be claimed, if a

piece of arable land assessed with the tax in a municipality were to lie uncultivated, tenantless and unproductive of rent for the statutory period (527).

The provision of this section have been made applicable to part IX (the cleansing of private privies and cesspools). See sec. 322.

For the meanings of "year" and "owner" see sec. 6 cls. (19) and (11) respectively.

Penalty

111. Whoever, being the owner of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the re-occupation of such holding within ten days of such re-occupation, shall be liable to a fine not exceeding three times the amount of rate payable quarterly on such holding.

Notes.

Owner.—See sec. 6 cl. (11).

There must be evidence to shew the amount that is payable on account of the rate, *J. Wood* v. *The Corporation of Calcutta*, I. L. R. 8 Cal. 891, *cf. Emperor* v. *Sumer Chand*, I. L R. All 375.

Of General Provisions relating to the Tax on Persons and the Rate on Holdings and to the Recovery of the same.

Appointment of assessor of municipal taxes.

111A. If at any time it appears to the Local Government, on the report of the Commissioner of the Division, that the assessment in any municipality is insufficient or inequitable, and if the Commissioners have not appointed an assessor under section 46, the

Local Government may, by an order in writing, require the Commissioners of such municipality to revise and amend such assessment, or to show cause against such order within a time to be specified therein;

and if the Commissioners fail to comply with such order, or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of municipal taxes for such municipality, within a time and for a period to be specified in such order; and such assessor shall exercise all the powers of assessment except under sections 113, 114 and 115, vested by this Act in the Commissioners.

Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners.

This section is new and has been added by sec. 43 of Beng. Act IV of 1894.

The object of this section is to guard against insufficient and inequitable assessments. It does not apply to a municipality in which there is an assessor appointed under sec. 46.

The authority conferred by this section should be exercised only when the necessity for action admits of no question (*See Govt. Cir. No. 34M. dated the 27th August 1894*).

Inequitable.—The Hon'ble Mr. Allen said, " it (assessment) would be inequitable if my small house at Ballygunge was to be rated at a higher rate than the Advocate-General's large house in Park Street ". (*Cal. Gaz, May 9, 189 Sup. p. 782*).

Insufficient.—The same Hon'ble member said, "if the Commissioners absolutely refuse to provide fund enough to keep the streets clean or to perform the other duties imposed on them under this Act while the wealth of the municipality is amply sufficient to provide those funds, in that case their assessment would be insufficient".—*Ibid.*

The last paragraph has been added with a view to prevent the provisions of the section from being made infructuous by the Commissioners fixing an inadequate salary.—(*See Cal. Gaz. May 9, 1894, Sup. pp. 784-7*).

Publication of notice of assessments.

112. When the assessment list of the tax upon persons, or the valuation and rating list of the rate on the annual value of holdings, shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in Form A or the notice in Form B of the third schedule (as the case may be) to be published in the manner prescribed by section 354.

Notes.

This section prescribes the preliminary procedure for the levy of the rate or tax, and any deviation shall make the assessment *null* and *void*. *See Leman* v. *Damodaraya*, I. L. R. 1 mad. 158, *Joshi Kalidas Sevakram* v. *Dakor Town Municipality*, I. L. R. 7 Bom. 399, and *Brindaban Chunder Roy* v. *Serampore Municipality*, 19 W. R. 309.

The Act, however, provides only incidentally for the appointment of a paid assessor and makes no provision whatever as to the method or means of assessment. It is wholly immaterial what machinery is used for arriving at the valuation (*e.g.* whether the assessor was legally qualified to make any assessment); all that is required is that there should be an assessment ready for publica-

tion and open to review under secs. 112 to 114, *Chairman of Chittagong Municipality* v *Jogesh Chandra Rai*, I. L. R. 37 Cal. 44.

Form A *is the notice of the preparation of the list of assessment on persons and Form* B of that of the valuation and rating list of holdings.

Application for review.

113. Any person who is dissatisfied with the amount assessed upon him, or with the valuation or rating of any holding,

or who disputes his occupation of any holding, or his liability to be assessed or rated,

may apply to the Commissioners to review the amount of assessment, valuation or rating, or to exempt him from the assessment or rate.

When an assessor has been appointed under section 111A, notice of every such application shall be given by the Commissioners to the assessor.

Change.

The last paragraph has been added by sec. 44 of Beng. Act IV of 1894.

Note.

Right of appeal.—This section provides for an appeal in the following cases and no other —

(1) By a person who is dissatisfied with the amount assessed upon him.

(2) By a person who is dissatisfied with the valuation or rating of any holding.

(3) By a person who disputes his occupation of any holding.

(4) By a person, who, being the occupier of a holding, disputes his liability to be assessed.

(5) By a person who disputes his liability to be rated. (*See I. L. R. 21 Cal. 326*).

(1), (3) and (4) have reference to the tax upon persons, and (2) and (5) to the rate upon holdings.

Jurisdiction of Civil Courts.—Civil Courts can interfere in cases (3), (4) and (5), (*Chairman of the Barisal Municipality* v. *Adya Snndari Mitra*, I. L. R. 21 Cal. 319 and sec. 116), also when the assessment is *ultra vires* (*Navadip Chandra Pal* v. *Purnananda Shaha*, 3 C. W. N. 73 and *Kameshwar Pershed* v. *The Chairman of the Bhabua Municipality*, I. L. R. 27 Cal. 849). See also notes under sec. 29.

In the other cases the decision of the Commissioners is final.—(*Maneswar Das* v. *Collector and Municipal Commissioners of Chapra* I. L. R. 1 Cal. 409.

Procedure upon review.

114. Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting. The Commissioners so appointed, after taking such evidence and making such inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such Commissioners, or of a majority thereof, in such cases shall be final.

Changes.

By sec. 45 of Beng. Act IV. of 1894 the words "Commissioners at a meeting" have been substituted for "Chairman" and the words "taking such evidence and" have been added.

Notes.

The substitution of the words 'Commissioners at a meeting' for 'Chairman' necessitates the appointment of Commissioners to hear appeals at a meeting and not by the Chairman as heretofore.

Not less than three.—This only lays down the minimum number. It is not necessary that the application should be heard and determined by all the Commissioners appointed. *Deb Narain*

Dutt v. *Chairman of the Baruipur Municipality*, I. L. R. 39 Cal. 141.

Taking such Evidence.—This section authorises the Commissioners to take evidence. They therefore constitute a court under section 3 of the Evidence Act and under section 4 of the Indian Oaths Act they are authorised to administer oaths.

Final—that is to say, as between the applicant and the Commissioners, no further appeal being allowed to the entire body of Commissioners or to any other authority,—it not being contended that the last clause standing alone would bar the interference of the Courts. *Per* **Beverly J.** in *Chairman of the Barisal Municipality* v. *Adya Sundari Mitra*, I. L. R. 21 Cal. 319 (326). Also compare *Valli Ammal* v. *Corporation of Madras*, I. L. R. 38 Mad. 41. Reading this clause with sec. 116, as amended, in the light of the interpretation given in this ruling, it is clear that questions other than those involving *merely the amount* of assessment or rating are recognizable by Civil Courts. See sec. 116 and the notes thereunder and notes to sec. 113.

It does not matter what method or means have been employed in making an assessment. All that the law requires is that it should be prepared and published under sec. 112; and when such an assessment has been confirmed by the Appeal Committee under this section, its validity cannot be impeached, *Chairman of Chittagong Municipality* v. *Jogesh Ch. Rai*, I. L. R. 37 Cal. 44.

The remedy provided by this section is sometimes loosely spoken of as an "appeal". It is really, however, a "review" of the valuation already made by the Commissioners. The Commissioners appointed under section 114 hear an application for "review", and their "decision, after taking such evidence and making such inquiries as they may deem necessary" is declared to be "final". No power is given by the Act to the Commissioners appointed under section 114 to review their decision passed on "review" Nor does the law ordinarily contemplate an authority to entertain an application to review an order made on application for a review. Cf. Civil Procedure Code, O. 47 r. 9. which restricts the authority of Civil Courts in similar cases.

115. Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section 112 relating to the list containing the assessment, valuation or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire.

Limitation of time for application of review.

116. No objection shall be taken to any assessment or rating in any other manner than in this Act is provided.

Assessment to be questioned only under Act.

Changes.

The words 'nor shall the liability of any person to be assessed or rated be questioned' and 'or by any other authority' after the words "rating" and 'manner' respectively have been omitted by sec. 46 of Beng. Act IV of 1894.

Notes.

Result of the Change.—The omission of these words removed the doubt raised by the High Court in the Barisal case (*Chairman of the Barisal Municipality* v. *Adya Sundari*, I. L. R. 21 Cal. 319) as to whether the section as it stood would be a bar to the entertainment of any suit against the Municipal Commissioners.

The Hon'ble Moulvi Serajul Islam Khan Bahadur in moving the amendment said, "the result will be that, as far as the question of the amount or assessment of rating is concerned, the adjudication of the Commissioners will be final; but if there be any question as to the liability to assessment, or questions which go

to the root of the matter, persons aggrieved should have some remedy."—Cal. Gaz. May 9, 1894, Sup. 788. *See Govt. Cir. No. 34 M, dated 27th August 1894, para, 21, and notes to sec.* 114.

Jurisdiction of Civil Courts.—The law having placed the determination of the annual value of a holding in the hands of the municipal authorities, the Court must accept as conclusive the amount fixed by them and find the legal liability to pay the tax based on this amount, *Municipality of Wai* v. *Krishnaji Gangadhar*, I. L. R. 23 Bom. 446 and *Morar* v. *Borsad Municipality*, I. L. R. 24 Bom. 607. Even in a case where a Civil Court ordinarily has jurisdiction to interfere on the ground that the local authority has acted *ultra vires*, the jurisdiction may be withdrawn by express legislation ; *e. g.*, as regards the amount of assessment made by the Commissioners under the Act. It was accordingly held that even if the Commissioners, fixing the assessment, had taken into consideration the means of the owner without confining their attention to the annual value of the holding, they might have acted improperly and exceeded their powers under the Act, but the Civil Court had no jurisdiction to question the assesment in view of the special provision of the law contained in the old section, corresponding to 116 of the Act, *Maneswar Das* v. *The Collector and Municipal Commissioners of Chupra*, I. L. R. 1 Cal. 409. In the recent case of the *Chairman, Municipal Board, Chapra* v. *Basudeb Narain* (11 C. L. J. 400, 14 C. W. N. 437, I. L. R. 37 Cal. 374) the ruling in this case was held to be binding; and it was further held *per* **Holmwood & Chatterji JJ.)** that where a municipality have the power to make a fresh assessment, as they have every three (five?) years, and merely raise the valuation, the Civil Court has no power to revise the valuation, but is bound to accept it as conclusive as a matter of fact. The jurisdiction to interfere in matters regarding the amount of assessment has been withdrawn by express legislation in this section. Courts can only interfere where the assessment is *ultra vires*. In the absence of proof of *mala fides*, perversity, or manifest error Civil Courts ought not to interfere with the house-valuation made by

a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation, *Karsondas* v. *Ankeshvar Municipality*, . L. R. 26 Bom. 294. The action of the Municipal Commissioners assessing the tax on person upon the basis of a person's circumstances and property outside municipal limits is *ultra vires*. The Civil Court has jurisdiction to set aside such an assessment, *Kameshwar Pershad* v *The Chairman of the Bhabua Municipality*, I. L. R. 27 Cal. 849. If an assessment be made within the powers conferred by the statute upon a municipality, the Civil Courts have no power to interfere; but if an assessment be made *ultra vires*. there is nothing in the Act to prevent a rate-payer from seeking in a Civil Court a decision that the action on the part of the municipality was *ultra vires* and that such an assessment was not binding upon him. So where P was the owner of a granary and a threshing floor, which were both assessed as one holding at Rs. 12 at the time of a general assessment, and afterwards in the very next year the municipality treated the granary and threshing floor as separate holdings and assessed the former at Rs. 12 and the latter separately at As. 9, it was *held* that this was not a case of enhancement of assessment but of fresh assessment and a suit lay to have it set aside. *Navadip Chundra Pal* v. *Purnananda Saha*, 3 C. W. N 73 All these decisions were referred to and followed in the *Chairman of Giridih Municipality* v. *Srish Chandra Mozumdar*, I. L R. 35 Cal. 859. See also *Brindaban Chandra Roy* v. *The Serampore Municipality* (19 W. R. 309), *Syed Shah Hamid Hossain* v. *Patna Municipality*, 17 C. W. N. 812 (815) *Queen* v. *Sheffield Railway Company* (11 A & E 194), *The King* v. *Long* (1 M. & Ry. 139), in re *Penny* (7 E & B 660) and *Queen* v. *South Wales Railway Company* (13 Q. B. 938). *Cf. The Crown* v. *Kanhaiya Lal*, 109 P. L. R. 1909, 2 P. R. 1910 (*Cr.*)

As to irregular and improper procedure in levying taxes *see Leman* v. *Damodaraya* (I. L R. I. Mad. 158), *Joshi Kalidas Sevakram* v. *Dakor Town Municipality* (I. L. R. 7 Bom. 399) and the case of *Nanda Lal Bose*.

Office hours for payment of taxes.

117. By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business.

It is not incumbent upon the Commissioners to go from house to house for realizing taxes.

Tax payable in advance.

118. The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists, the notice relating to which is published under section 112, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due.

Every instalment of such tax or rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

As to the altered amount compare sec. 97A.

Receipts to be given.

119. For all sums paid on account of any tax or rate under this Act a receipt stating the amount and the tax or rate on account of which it is paid shall be given, signed by the tax collector or by some other officer authorised by the Commissioners to grant such receipts.

Bill and notice of demand to be presented.

120. At any time within six months after any sum has become due on account of any tax or rate, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax or rate on account of which the charge is made.

If the amount mentioned in such bill be not paid on presentation thereof, a notice of demand in the form marked A in the fourth schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time:

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the Chairman or an officer authorised in that behalf, and shall be served by a person authorized to receive payment.

Presentation.—The presentation of the bill and service of notice of demand (with copy of bill attached) may be effected on the same occasion or at the same time and interview, one immediately following the other.—*Opinion of the Legal Remembrancer, App.*

Where a bill under this section has been duly presented and a notice of demand has been served on a ratepayer, the Commissioners are debarred from issuing a second notice of demand so as to extend the period of limitation of three months, *See Government Cir. No.* 14 *T.—M.* (2-9-02), *App.* See section 358 and notes thereunder for consequence of failure of presentation.

Sec. 356 prescribes the mode in which the bill or notice of demand is to be served.

The provisions of this section also apply to the recovery of all costs, expenses, fees, tolls or other moneys due under the Act (sec. 360).

If not paid in fifteen days, process of distress may issue.

121. If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section 114 pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same, the amount of the arrear due, with costs on the scale shown in the table of fees marked B in the fourth schedule, may 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 as aforesaid, be levied by distress and sale of any moveable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any moveable property belonging to any other person, subject to the same exceptions, which may be found within the holding in respect of which such defaulter is liable to such tax or rate:

Provided that when the holding in respect of which the default is committed is a place of business and the moveable property distrained is shown to the satisfaction of the Commissioners to have been

left there for repairs or safe custody in the ordinary course of business, it shall be released.

Provided also that if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Changes.

The provisos are new and have been substituted by sec. 47 of Beng. Act IV of 1894 for "if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of distress, or by reason of any payment he may make to avoid such distress or any sale under the same."

Moveable property.—For definition see sec. 6 cl. (6). A hut is an immoveable property, compare sec. 6 cls (4) and (5). In the case of *Nattu Meah* v *Nund Ranee*, (17 W. R. 309), the question before the Full Bench was whether huts are to be considered as moveable property. **Couch C. J.** in making the distinction said,—"physically moveable things are such as can be moved from the place which they presently occupy without an essential change in their actual natures; and immoveable things are such as cannot be moved from their present places, or cannot be moved from their present places without an essential change in their actual natures". See also *Raj Chunder Bose* v. *Dhurmo Chunder Bose* (10 W. R. 416).

Moveable property belonging to any other person.—In justification of this provision the Hon'ble Mr Allen said, "it is perfectly well recognized that the property of an innocent tenant is liable for taxes on the premises which he occupies, and which are left unpaid by the previous tenant, and it is the duty of a tenant entering on premises to make sure that all taxes have

been paid up to the date of his entry. If he neglects to do so, he has only himself to blame if his property is seized. The liability to the tax is not of a personal character, but arising from the ownership or occupation of a holding. The law has from the first made the moveable property in a holding responsible for all rates then outstanding and due."—*Cal. Gaz.*, *May* 9, 1894, *p.* 790.

Fish in Tanks and Fruit on Trees.—According to the definitions in section 6 cls. (5) and (6), 'moveable property means property other than immoveable property," and "immoveable property" includes benefits arising out of land.

Although there is no ruling under this Act to the point, the same words, occurring in the definition of "immoveable property" in other Acts, have been judicially considered and held to include (1) fishery (see *Fudu Jhala* v. *Gour Mohan Jhala*, I. L. R. 19 Cal. 544, 553-4, F. B.) and (2) fruits on trees (*Cf. Jograni Bibi* v. *Ganeshi*, I L. R. 3 All. 435 and *Isa Ram* v. *Nur Din*, 66 P. R. 1900). Fishes in tanks and fruit on trees are, therefore, not liable to distress and sale under this section.

Officer charged with execution of the warrant.—Where the distress warrant authorised the distraint of moveables of the defaulters, wherever found within the municipality, or any other moveables found within the holding in default specified in the warrant, it was *held* that the tax-daroga was justified in attaching goods proved to belong to the defaulters, which were found within municipal limits, (*Kanindra Nath Chatterjee* v. *Emperor*, I. L. R. 36 Cal. 67). See also *Emperor* v. *Babulal* (I. L. R. 33 Bom. 213) where it has been held that a tax-collecting clerk of a municipality is a public servant under cl. (10) of section 21 of the Indian Penal Code and any obstruction offered to him in execution of his duties is an offence under section 186 of the Code.

Refund.—A suit for refund of taxes realised in excess of a rate-payer's liability lies in the Civil Court. See *Ohunilal* v. *Surat Municipality*, I. L. R. 27 Bom. 403 (408).

The wording of the first proviso has been taken from the Calcutta Municipal Act.

If the bill is not presented under sec. 120 within six months after the tax becomes due, the amount due under it cannot be realized by distress warrant under this section. The remedy is by a civil suit. See, however, sec. 358 and the notes thereunder. Compare *Surat Municipality* v *Chhabildas* (16 Bom. L. R. 749) in which it has been held that the right of distress depends upon the observance of statutory formalities, it being a right conferred only by the statute upon those conditions.

Distress how to be made.

122. Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked C in the fourth schedule.

Distress shall be made by actual seizure of moveable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all moveable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof, by beat of drum, in the municipality or ward in which the property is situated, and by serving on the defaulter a notice in the form marked D in the fourth schedule :

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent, at any time after the expiry of six hours from the seizure.

Distress warrants must be signed by the Chairman, or when he delegates the power of signing them under sec. 45, by the Vice-Chairman

Officer may break open door

123. The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any moveable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that he shall not enter or break open the door of any room appropriated for the zanana, or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

Sale how to be conducted.

124. If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the moveable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.

Return of sales.

The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the form marked E in the fourth schedule.

Certain persons prohibited from purchasing at sales

125. All officers and servants of the Commissioners, and all chaukidars, constables and other officers of police are prohibited from purchasing any property at any such sale.

Penalty.

Whoever (not being a public servant within the meaning of section 21 of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months, or with fine, or with both.

Change.

The second paragraph has been added by sec. 48 of Beng. Act IV of 1894.

Notes.

Hitherto there was no penalty provided for infringement of the provisions of this section by officers and servants of the Commissioners who are not public servants.

Chaukidars, constables and officers of police, and those officers and servants of the Commissioners whose duty it is as such officers to take, receive, keep or expend any property, to make any survey or assessment, levy any tax or rate, are public servants under sec. 21 cl. (10) of the Indian Penal Code, and are punishable under sec. 169, I. P. C.

Commissioners to keep account of distress and sales.

126. The Commissioners shall cause a regular account to be kept of all distresses levied and sales made, for the recovery of taxes under this Act.

Sale of proprety beyond limits of municipality

127. If no sufficient moveable property belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any moveable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any moveable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal, and such other Magistrate shall endorse the warrant so issued and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

Changes.

By sec. 49 of Beng. Act IV of 1894 the words "moveable property" have been substituted for "goods or chattels" after "sufficient" and "moveable" for "personal" and "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal" for "whatsoever."

Notes.

Magistrate exercising jurisdiction &c Bengal.—*In issuing precept warrants this expression should be strictly kept in view.* The issue of such a warrant to a magistrate in Burma was held to be irregular —See *B. G M. Cir. No* 1460 *T. M.* 11 *Nov.* 1897 (Govt. Cir. vol. III *p.* 1063)

It was held under a similar section of the N W. P. Act that in issuing a warrant for the realisation of arrears of municipal

taxes, alleged to be due, the magistrate acts in a ministerial capacity only and has no jurisdiction to inquire judicially as to whether such arrears are really due or not.—*W. J. Ellis* v. *Municipal Board of Mussoorie*, I. L. R. 22 All. 111.

"**The Magistrate**".—See sec. 6 cl. (8).

Distress or sale not unlawful for want of form.

128. No distress or sale made under this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto.

Commissioners may bring suit instead of distraining or on failure of distress

129. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

Any tax.—It will be noted that although this section comes within the part relating to *holding rate*, the expression used here is *any tax* and not *rate* It is submitted, therefore, that a civil suit may lie not only for this rate, but for other rates and fees as well. See also section 360.

When the Commissioners omit to serve a bill under sec. 120 within six months they can realize money due to them under the Act by a civil suit.

Limitation.—Where a debt lies on a *statute*, an action for the debt is governed by art. 120 of the limitation Act and the suit may be instituted within six years, *President of Municipal Commission, Gantoor* v. *Srikakulopa*, I.L.R. 3 Mad. 124. This was a suit for recovery of a tax which had not been paid by the defendant. See notes to section 116.

Irrecoverable taxes.

130. The Commissioners may order to be struck off the books the amount of any tax or rate which may appear to them to be irrecoverable.

The Municipal Commissioners have power to revive cancelled bills.—*Chairman, Santipur Municipality* v. *Dinanath Garai*, 2 C.W.N. *p* xxiii (notes).

Of the Tax on Carriages, Horses and other Animals.

Tax on carriages, horses and other animals

131. When it has been determined that a tax on carriages, horses and other animals specified in the fifth schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse and every other animal of the kind specified in the said schedule, which is kept or is used in the ordinary course of business within or which is let for hire within or without, the municipality, and is used in the ordinary course of business within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section 354.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what rates, not exceeding the rates given in the said schedule, such tax shall be levied.

But such tax shall not be imposed on—

(*a*) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;

(*b*) animals exempt from any municipal tax under section 25 of the Indian Volunteers Act, 1869;

(*c*) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

(*d*) animals used by, or exclusively for the purposes of, any regiment;

(*e*) horses or ponies used by police officers, at the rate of not more than one for each officer;

(*f*) carriages, the wheels of which do not exceed twenty-four inches in diameter;

(*g*) carriages or animals kept for sale by any *bona fide* dealer in such carriages or animals, and not used for any other purpose.

Change.

The words "used in the ordinary course of business" were substituted for "habitually used" by sub-sec. (1) of sec. 9 of Beng. Act II of 1896.

Notes.

Carriage.—For the definition of, see sec. 6 cl. (1).

A damaged carriage not fit to convey human beings is not taxable.

In the fifth schedule, the doubt hitherto entertained whether carriages drawn by one pony were taxable or not has now been

removed by the insertion of the words "for every four-wheeled carriage drawn by one pony, &c."

Used in the ordinary course of business.—For the meaning of, see sec. 141B. This expression has been substituted with a view to set at rest the doubt expressed by the High Court as to the exact scope of the term, "habitually used" in the case of the *Legal Remembrancer* v *Shama Charan Ghose* (I. L. R. 23 Cal. 52).

Sec. 25 of the Indian Volunteers Act (XX of 1869) provides that "every mounted officer, and every mounted orderly of a Corps of Volunteers, and member of such Corps, while he belongs to a troop of cavalry in such Corps, shall be at liberty to keep one horse without being liable to pay in respect thereof any municipal or other tax imposed upon horses."

Tax so fixed to continue in force until altered.

132. Any order of the Commissioners imposing a tax under the last preceding section shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid; unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Licenses how to be obtained

133. In any municipality in which tax has been imposed under section 131, the owner of every carriage, horse and other animal specified in the said schedule shall within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages,

horses and other animals liable to the tax, for which he is bound to take out a license.

Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses, and other animals specified in such statement, according to the rates specified in any order for the time being in force under the two last preceding sections.

Notes.

As to penalty see sec. 137.

No prosecution under sections 182, 199 and 417—511 of the Indian Penal Code lies for omission to make a return under this section or for making a false return, as there is no provision for a penalty for doing so, *Abdul Rahaman* v *Chandi Persad*, I. L. R. 22 Cal. 131.

Proportionate tax on carriages, &c., acquired during half-year

134. If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse or other animal specified in the schedule in respect of which no license has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof, and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half-year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

As to penalty see sec. 137.

On payment of tax, Commissioners to give a license.

135. On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses and other animals for the period in respect of which the amount is received.

Such license shall be for the current half-year and no longer.

Shall give a license.—It is obligatory upon the person applying for a license to pay to the Commissioners the requisite amount of tax *at the time of forwarding* a statement under sec. 133. "On receiving this statement and the money the Commissioners must, under sec. 133, give the applicant the license which he has asked and paid for; they have no power to refuse it in any case; and if at the same time it was applied for, the person, to whom the application was made, knew that the person applying for a license for one horse had twenty in his stables, he could not, under any provision under this Act, refuse the license for the one horse for which the tax was paid"—*Abdul Rahaman* v. *Chandi Persad*, I. L. R. 22 Cal. 131.

Carriage, &c., liable to tax, although the owner be absent.

136. Whenever the owner of any carriage, horse or other animal liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse or other animal is for the time being kept shall take out a license for the same.

For penalty see sec. 137.

137. Whoever keeps or is in possession of, any carriage, horse or other animal, without the license required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such license exclusive of the amount so payable.

Penalty

Notes.

Three last preceding sections—Evidently refers to sections 133, 134 and 136.

There must be evidence to show what the amount payable on account of the license is, *J. Wood* v. *The Corporation of Calcutta*, I. L. R. 8. Cal. 891.

Fines under this Act may be levied under the provisions of the Criminal Pocedure Code. See. Sec. 355.

138. The Commissioners, at their discretion, may compound for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages or animals for hire, for a certain sum to be paid for the carriages or animals so kept by such person, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 131 and 132.

Commissioners may compound with livery stable-keepers.

139. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them, and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has

List of persons licensed to be prepared.

been given, and of the carriages, horses and other animals in respect of which they have paid the tax.

Power to inspect stable, &c., and to summon persons liable to the payment of the tax.

140. The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable, or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been duly taken out.

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

No penalty is provided for non-compliance with any summons issued under this section.

Refund of tax in certain cases

141. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears

to the half-year; but no such refund shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

In order to entitle a person to a refund under this section the carriage, &c. must *neither* be kept *nor* used in the manner contemplated in sec. 131.

Prohibition of double fee.

141A. Nothing in sections 131 to 141 shall be deemed to authorise the levy of more than one fee for the same period in respect of any carriage, horse or other animal which is kept or used in more than one municipality.

Changes.

This section is new and has been added by sec 50 of Beng. Act IV of 1894. The words "or cantonment" at the end of the section have been omitted by sub sec. (4), sec. 9 of Beng. Act II of 1896.

Notes.

Municipality.—*Cf. The Bellary Municipal Council* v. *Sarkiss* (4M. L. T. 477, 9 Cr. L. J. 91) in which it has been held under similar circumstances that payment of tax in a cantonment will exempt payment in a municipality.

Meaning "used in the ordinary course of business."

141B. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business, within the meaning of section 131, if it is used on business, on an average thrice a week.

This section was inserted by sec. 10 of Beng. Act II of 1896.

Of the Registration of Carts.

Registration and number of carts.

142. The Commissioners at a meeting may make and publish an order that every cart which is kept or is used in the ordinary course of business within or which is let for hire within or without the municipality and is used in the ordinary course of business within it shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct :

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

This section shall not apply to—

(*a*) carts which are the property of the Government or of the Commissioners ;

(*b*) carts which are kept without the limits of the municipality and are only temporarily and casually used within such limits ;

(*c*) Howrah.

Changes.

The words "or the suburbs of Calcutta" after "Howrah" were omitted by sec. 51 Beng. Act IV of 1894. The expression, "or is used in the ordinary course of business" was substituted for "habitually used" by sub-sec. (1), sec. 9 of Beng. Act II of 1896.

Notes.

Cart.—For the definition of the term "cart", see sec. 6 cl. (2).

Used in the ordinary course of business—For the meaning of,

see sec. 147B. **This expression has been substituted with a view to set at rest the doubt expressed by the High Court as to the exact scope of the term, "habitually used", in the case of the *Legal Remembrancer* v. *Shama Charan Ghose*, (I.L.R 23 Cal. 52.)**

Howrah.—Carts kept or plied within Howrah are registered by the Calcutta Corporation which makes proportionate contribution.

Shall bear the number, &c.—*Cf. Srinivas* v. *Municipal Council, Kumbakonam* (3 M.L.T. 405, 18 M.L.J. 377) noted under sec. 146.

Fee for registration

143. The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify; and such fee as they shall from time to time fix and notify, not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration

For penalty see sec. 146.

Proportionate payment of fee.

144. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as shall bear the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on

which such person may have become possessed as aforesaid.

For penalty see sec. 146.

Transfer of ownership

145. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration.

For penalty see sec. 146.

Penalty

146. Whoever keeps, or is in possession of a cart not duly registered as required by any of the three last preceding sections shall be liable to a fine not exceeding three times the amount payable by him in respect of such registration, exclusive of the amount so payable; and whoever, being the owner or driver of any cart shall fail to affix thereto the registration number as required by section 142 shall be liable to a fine not exceeding five rupees.

Fines under this Act may be levied under the provisions of the Criminal Procedure Code, see sec. 355

Affix.—Cf. *Srinivas* v. *Municipal Council, Kumbakonam* (3 M. L. T. 405, 13 M. L. J. 377) in which removal of the portion of the axle, on which the number had been painted, from a damaged wheel and affixing the same to the repaired axle was held to be sufficient compliance with the provision of law, in as much as there was no bye-law expressly laying down any particular mode of affixing.

Seizure and sale of unregistered cart.

147. If any person owns or keeps any cart hereinbefore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same; and all police-officers are required, on the application of the Commissioners, or of any servant of the Commissioners duly authorized in that behalf to assist in the said seizure.

After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such vehicle and animals by auction at such place as they may state in the notice and if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction:

Provided that, if at any time before the sale is concluded the person whose cart has been seized

shall tender to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred, and the registration fee payable by him, the Commissioners shall forthwith release the cart so seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any cart which has been seized under this section may be sold for the realization of any such fine.

The surplus sale-proceeds may be paid on demand, *if not* time-barred, under the Limitation Act.

Prohibition of double fee.

147A. Nothing in sections 142 to 147 shall be deemed to authorise the levy of more than one fee for the same period in respect of any cart which is used in the ordinary course of business in more than one municipality.

Apportionment of fees.

When carts not kept within any municipality are so used in more than one municipality, the Local Government, on the application of the Commissioners of any such municipality, may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

Levy of fee when cart registered in more than one municipality.

Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a

right to levy the registration fee in preference to the Commissioners of any other municipality.

Changes.

This section was inserted by sec. 52 of Beng. Act IV of 1894 The words "used in the ordinary course of business" were substituted for "habitually used" in para 1, paras 2 and 3 were added and the words "or cantonment" at the end of para 1 were omitted by sub-secs (2), (3) and (4) respectively of sec 9 of Beng. Act II of 1896

See notes to sec 142

147B. A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 142 and 147A, if it is used on an average, twice a week.

Meaning of "used" in the ordinary course of business

Change

This section was added by sec 11 of Beng Act II of 1896.

Note

For the necessity of this sec see notes to sec 142.

Of Tolls on Ferries.

148. The Local Government may, with the consent of the Commissioners, make over to the Commissioners any existing public ferry within or adjacent to the limits of the municipality to be administered by them until the Local Government shall otherwise direct.

Existing public ferries.

Every ferry, while so administered, shall be deemed to be a municipal ferry, and the profits derivable therefrom, or such part of the profits as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

Ferry.—This expression in this Act means the exclusive right to carry passengers across a stream from one bank to the other on payment of certain prescribed tolls, *The Government of Bengal v. Senayat Ali*, I. L. R. 27 Cal. 317.

Other ferries may be declared to be municipal.

149. The Commissioners may also, with the sanction of the Local Government, declare that any other ferry within, or adjacent to, the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the municipal fund:

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the Magistrate under the provisions of section 4 of Bengal Act I of 1866 (*to amend certain provisions of Regulation VI of 1819*), or any similar law for the time being in force.

Compensation.—Bengal Act I of 1866 was repealed by Act I of 1885, section 17 of which provides for the mode in which the amount of compensation is to be ascertained.

Magistrate.—A reference to section 17 of Act I of 1885 would shew that the word 'Magistrate' in this section means the Magistrate of the District and not 'the Magistrate' as defined in sec. 6 cl. (8) of this Act

Duties of Commissioners in regard to such ferries.

150. Every municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travel-

lers, and the safety of property to be conveyed on such ferry.

Rate of tolls to be established and published

151. When it has been determined to impose tolls on municipal ferries, the Commissioners at a meeting shall make and publish an order specifying the ferries, and, with the sanction of the Commissioner of the Division, the rates at which such tolls shall be levied.

Such rates may from time to time be varied with the like sanction.

When persons crossing river not liable to toll.

152. No person shall be liable to pay any toll for crossing any river or stream at or near a municipal ferry, unless he avails himself of the means provided by the Commissioners for crossing such river or stream.

See *The Government of Bengal* v. *Senayat Ali*, I. L R 27 Cal. 317

Cancellation of ferry lease, &c

153. Every lease of a ferry given by the Commissioners as hereinafter provided shall be liable to be cancelled at once, if it shall appear to the Commissioners at a meeting that the lease has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from the Commissioners.

On the cancelment of a lease the Commissioners may take possession of all boats and other appliances which have been used by the lease in the working

of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

Toll must be pre paid

154. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may require any person who refuses to pay the toll to leave the boat and to remove his goods from it.

Penalty.

Any person who refuses to leave a municipal ferry boat or to remove his goods therefrom when required to do so under this section, shall be liable to a fine not exceeding ten rupees

Keeping of unauthorised ferry

155. No person shall keep a ferry boat for the purpose of plying for hire within a distance of two miles above or below any municipal ferry without the previous sanction,

of the Commissioners, if he plies within the limits of the municipality, of the Magistrate of the district, if without such limits,

or of the Magistrate of the district and the Commissioners, if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which may be in existence at the commencement of this Act.

Municipal Ferry—means a ferry declared under section 149 to be a municipal ferry.

The object of this section appears to be to prevent the crossing of passengers from one bank of a river to the opposite bank by a boat plying for hire without a license within prescribed limits. The mere crossing of the bar of a *khal*, leading into a municipal ferry does not, therefore, constitute a breach of the Act.—*The Government of Bengal* v. *Senayat Ali*, I L. R. 27 Cal 317, 4 C. W. N. 348.

Penalty.

156. Whoever keeps a ferry boat contrary to the provisions of the last preceding section shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

Under the Beng. Ferries Act I of 1885, the provisions of which are similar, it has been held that, in order to sustain a conviction for plying within public ferry limits it must be shown that a declaration with respect to the public ferry has been made, and the declaration itself and the limits fixed thereby must be proved, *Moharaj Mandal* v. *Pokar Singh* 12 C. L J. 21, I. L R 37 Cal 543.

A ferryman has no authority to demand toll from persons who are merely passengers in an unlicensed boat. The remedy against the person who keeps a ferry-boat without a license plying within prescribed limits is provided by this section, *The Government of Bengal* **v.** *Senayat Ali*, I. L. R. 27 Cal. 317, 4 C. W. N. 348.

Daily fine.—in addition to substantive is bad in law. *See* notes to *sec 218.*

Of Tolls on Bridges and Roads.

Existing toll-bars.

157. The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any existing toll-bar within the limits of the municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar while so administered shall be deemed to be a municipal toll-bar, and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

Commissioners may establish toll-bar.

158. The Commissioners at a meeting, with the sanction of the Local Government, may establish a toll-bar and levy tolls on any bridge or metalled road which they may have constructed after the commencement of this Act, or at any place within the municipality adjacent to such bridge or metalled road at which tolls may conveniently be levied on vehicles and animals passing over such bridge or road; and the profits derivable therefrom shall be carried to the credit of the municipal fund;

Provided that no such toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge or road, and in maintaining such bridge or road in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided.

Commissioners to publish expenses, &c., of toll-bars.

159. Whenever a toll-bar shall have been established, and tolls shall be levied, as provided in the last preceding section, the Commissioners shall at the end of each year publish, by causing it to be posted up at their office, an abstract account showing—

(1) the amount of expenses incurred in the construction of such bridge or road, and in the maintenance of the same;

(2) the amount of interest which has accrued due thereon, at the annual rate of six per centum; and

(3) the amount which has been received from the profits of the said toll-bars since its establishment.

And, as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bars shall be removed and tolls shall no longer be levied on such bridge or road.

Rates of tolls to be established and published.

160. When it has been determined that tolls shall be levied on any such bridge or road, the Commissioners at a meeting shall make and publish an

order, with the sanction of the Commissioner of the Division, specifying the rates at which such tolls shall be levied.

Such rates may, from time to time, be varied with the like sanction.

Power of collector or lessee in case of refusal to pay toll.

161. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid.

Penalty for refusing to pay or avoiding payment of toll.

162. Whoever, having driven any vehicle or animal (not exempted from toll) through a toll-gate, refuses to pay the toll, or, with intent to evade payment of the toll fraudulently avoids passing through such toll-gate, shall be liable to a fine not exceeding fifty rupees.

Toll leviable only at toll-gate.—In the case of *Uttam Chunder Gunguli* v. *Issur Chunder Mukerjee* (22 W. R. 76 C. R.) it was contended by the accused, a toll-collector on the Benares Road within the limits of the Howrah Municipality, that he had authority to collect tolls on carts on the aforesaid road irrespective of any distance from the toll bar. But the High Court (*per.* Markby and Mitter, JJ.) held that it was at the toll-bar alone that the tolls could be levied.

In case of non-payment of toll vehicle &c. may be seized and sold.

163. If the toll due on any vehicle or animal is not paid on demand, the person authorized to collect the same may seize such vehicle or animal or any part of its burden of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and, if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized, for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners, or in a Court of competent jurisdiction:

Provided that, if at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

Notwithstanding anything contained in this section, the surplus of the sale proceeds of any property seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any property which has been seized under this section may be sold for the realization of any such fine.

Of General Provisions relating to Tolls on Ferries and Roads.

Lease of ferry or toll-bar.

164. The Commissioners may grant a lease of any municipal ferry or toll-bar for any period not exceeding three years.

Note.

It has been held by the Madras High Court that money due from the lessee under such a lease is neither "rent" nor "toll" and the summary procedure of the Act is not applicable for the realisation of such money, *Abdul Azeez Shahib* v *Cuddapah Municipality*, I. L. R. 26 Mad. 475.

Table of tolls to be hung up.

165. A table of tolls legibly written in the vernacular of the District shall be hung up,

in some conspicuous position at each end of every municipal ferry, and

in some conspicuous position near every municipal toll-bar, so as to be easily read by all persons required to pay the toll.

Penalty.

166. Whoever, being a toll-collector or lessee of a municipal ferry or toll-bar, neglects to hang up a table of tolls as required by the last preceding section, shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

Composition in respect of toll.

167. The Commissioners, or the lessee of any municipal ferry or toll-bar, may compound with any person for a certain

sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable.

Exemptions.

168. No tolls shall be paid for the passage of troops on the march, or of animals or vehicles employed in the transport of such troops;

or of military or Government stores, or the persons in charge of them;

or of Military or police officers, or of any public or municipal officer on duty, or of any person in their custody, or of any property belonging to them or in their custody, or of any vehicle or animal employed by such persons for the transport of such property;

or of conservancy carts or other vehicles or animals belonging to the Commissioners, or of the persons in charge of them;

or of any animals, whether belonging to Government or otherwise, which are attached to a regiment or a military department, and which pass through a toll-bar:

Provided that tolls shall be leviable for conveying such animals over a ferry

And the Commissioners or their lessees shall not be bound to allow any person or thing not specified above to cross a ferry or to pass a toll-gate without payment of the prescribed toll.

But the Commissioners at a meeting may exempt any other class of persons or things from payment

of the said toll; and in granting a lease of any ferry or toll-bar may stipulate that any municipal servants and property and any other persons or things shall be allowed to pass without payment of the toll.

Police officers to assist.

169. In all cases of resistance to the person authorized to collect tolls, police officers shall assist when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary police duties.

Penalty for taking unauthorized tolls

170. Whoever, being authorized under this Act to collect tolls, demands or takes any higher tolls than the tolls authorized under this Act, shall be liable to a fine not exceeding fifty rupees, and in default of payment to one month's imprisonment.

Commissioners may be appointed to collect tolls in a navigable channel

171. If the Local Government has declared that the provisions of the Canals Act, 1864, or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality, it may, with the consent of the Commissioners, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

In such case the Commissioners shall exercise all the powers vested by such Act in the Collector.

The Canals Act is Beng. Act V of 1864.

Local Government may order Commissioners to cease levying tolls.

172. The Local Government may at any time order that the Commissioners or any person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

PART V.

MUNICIPAL REGULATIONS WHICH SHALL BE GENERALLY IN FORCE IN ALL MUNICIPALITIES.

General.

Operation of this Part.

173. The provisions of this part shall be in force in every municipality, unless and until the Local Government shall otherwise direct.

Local Government may order provisions of this Part to be not in force in any municipality.

174. The Local Government may, at any time make an order directing that all or any of the said provisions shall not be in force in any municipality or in any part thereof; and the provisions mentioned in such order shall cease to be in force in such municipality, or part thereof, from the date specified in such order.

The Local Government may at any time cancel or modify any order made under this section.

175. Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and the occupiers of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served as provided in sections 356 and 357, on every owner or occupier who is required to execute such work or to do such thing; but, if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers of any land, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners or occupiers.

Procedure when owners or occupiers required to execute works by Commissioners.

Every requisition as aforesaid shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition, or to prefer an objection against such requisition as provided in the next succeeding section the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.