

the municipality in accordance with the provisions of Bengal Act IV of 1873 (*for registering births and deaths*) or any other similar Act for the time being in force.

347. The Local Government may require the Commissioners of any municipality to appoint and maintain at any burning-ghat and burial-ground a sub-registrar for the registration of all corpses brought to such burning-ghat or burial-ground for cremation or interment.

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

348. Whenever a sub-registrar shall have been appointed for any burning-ghat or burial-ground under the last preceding section, information of the particulars required by section 8 of Bengal Act IV of 1873 to be known and registered may be given in respect of the death of any person whose body is brought to such burning-ghat or burial-ground for cremation or interment to such sub-registrar, and information so given shall be deemed to be information given to the registrar of the district as required by the said section.

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

Section 9 of Bengal Act IV of 1873 shall be applicable to all sub-registrars appointed under this Act.

349. Whenever a death shall occur in any hospital within the limits of any municipality in respect of which the Local

Information of deaths in hospitals

Government has directed that all deaths shall be registered under Bengal Act IV of 1873, it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information of such death to a registrar under Bengal Act IV of 1873 or to a sub-registrar under this Act.

PART XIA.

Extinction and Prevention of Fire.

This part is new and has been added by sec. 92 of Beng. Act IV of 1894.

The provisions of this Part have been mostly taken from the Punjab Municipal Act.

849A. For the prevention and extinction of fire, the Commissioners at a meeting ^{Establishment and maintenance of fire-brigade} may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

The cost of these arrangements is a legitimate charge upon the Municipal Fund under section 69 (14).—See *Govt. Oir. No. 34 M. D. 27. 8. 1894 Para. 38.*

349B. (1) On the occasion of a fire in a municipality, any Magistrate, any municipal Commissioner, the Secretary to the Commissioners, any member of a fire-brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any police-officer above the rank of constable may—

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

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;
- (b) close any street or passage in or near which any fire is burning;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any hose or other appliance, any premises;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;
- (e) call on the persons in charge of any fire-engine to render such assistance as may be possible;
- (f) generally take such measures as may appear necessary for the preservation of life or property:

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

PART XIB.

Sanitary Officers.

This part has been inserted by section 2 of Bengal Act II of 1914—The Bengal Municipal (Sanitary Officer) Act, 1914. See note under page 1.

343C. (1) The Local Government may, by notification published in the *Calcutta Gazette*, announce its intention to declare this Part to be in force in any Municipality.

Power to declare this part to be in force in any Municipality.

(2) If the Commissioners or any ratepayer of any such Municipality object or objects to this Part being declared in force in the Municipality, they or he may, within a period of two months from such publication, submit such objection in writing, through the District Magistrate, to the Local Government; and the Local Government shall consider all objections so sent.

(3) After the expiration of the said period, the Local Government, if no objections have been so sent or if it considers that the objections so sent are insufficient, may, by a like notification, make the proposed declaration.

(4) The substance of every notification under sub-section (1) or sub-section (3) shall be translated, deposited, posted and proclaimed, within the Municipality affected, in the manner prescribed by section 354.

Note.

By B. G. Notification No. 105 San.—*The 15th February 1916*, this part has been declared to in force in each of the following Municipalities :—

Maniktola.	Naihati.	Ranaghat.
Bhatpara.	Tollygunge.	Kushtia.
Cossipore-Chitpur.	Kamarhati.	Jessore.
Garden Reach,	South Dum-Dum.	Khulna.
South Suburban.	Halisahar.	Satkhira.
Budge-Budge.	Rajpur.	Berhampore.
Titagarh.	Baraset.	Murshidabad.
Baranagore.	Bisirhat.	Azinganj.
Panihati.	Krishinagar.	Jangipore.
North Barrackpore.	Santipur.	
Garulia.	Nadia.	

349D. (1) Notwithstanding anything contained in section 16, the Commissioners of every Municipality in which this Part is in force shall from time to time, at a meeting appoint for the Municipality—

- (a) a Health Officer, or
 (b) a Health Officer and one or more Sanitary Inspectors, or

(c) one or more Sanitary Inspectors, as the Local Government may, by notification in the *Calcutta Gazette*, direct; such Health Officer to be of such class, and such Sanitary Inspectors to possess such qualifications, as may be so directed.

(2) The provisions of sub-section (1) shall not apply to any Municipality the income of which falls below ten thousand rupees a year.

Note.

By B. G. Notification No. 104 San.—The 14th February 1916 the class and number of Health Officers and Sanitary Inspectors to be appointed for each of the Municipalities has been fixed as shown against each of them in the following list:—

Name of Municipality.	Number and class of Health Officer.	Number and class of Sanitary Inspector.
Maniktola ...	... 1 First class	... 3 Second class.
Bhatpara ...	... Do.	... 3 Do.
Ossipore-Chitpur ...	... Do.	... 2 Do.
Garden Reach ...	... 1 Second class	... 1 Do.
South Suburban ...	... Do.	... Do.
Budge-Budge ...	... Do.	... Do.
Titagarh ...	... Nil.	... 2 Do.
Baranagore ...	... 1 Second class	... 1 Second class.
Panihati ...	... Nil.	... Do.
North Barrackpore ...	... Nil.	... Do.
Garia ...	... Nil.	... Do.
Naihati ...	... Nil.	... Do.
Tallygunge ...	... Nil.	... Do.
Kamarhati ...	... Nil.	... Do.
South Dum-Dum ...	... Nil.	... Do.
Halisahar ...	... Nil.	... Do.
Rajpur ...	... Nil.	... Do.
Barasat ...	... Nil.	... Do.
Basirhat ...	... Nil.	... Do.
Krishnagar ...	... 1 Second class	... Do.
Santipur ...	... Do.	... Do.
Nadia ...	... Nil.	... Do.
Ranaghat ...	... Nil.	... Do.
Kustia ...	... Nil.	... Do.
Jessore ...	... Nil.	... Do.
Khulna ...	... Nil.	... Do.
Satkhira ...	... Nil.	... Do.
Berhampore ...	... 1 Second class	... Do.
Murshidabad ...	... Nil.	... Do.
Azimgunj ...	... Nil.	... Do.
Jangipore ...	... Nil.	... Do.

349E. The Local Government shall from time to time fix the salaries to be paid to Health Officers and Sanitary Inspectors out of the Municipal Fund, and the allowances to be granted to them during absence on leave.*

Salary and allowances of Sanitary Officers.

Power to make rules. "349F. The Local Government may from time to time make rules prescribing—

- (a) the qualifications of candidates for employment as Health Officers and Sanitary Inspectors respectively; and
- (b) the division of Health Officers and Sanitary Inspectors into classes or grades according to their qualifications.

349G. When a Health Officer has been appointed for any Municipality, the power conferred by section 199A shall be exercisable by him as well as by the Chief Civil Medical Officer of the district.

Unwholesome water.

349H. Every section of this Act which relates to Municipal Officers or servants shall, so far as it may be applicable, apply to the officers referred to in section 349D:

Application of Act to Sanitary Officers.

Provided that no Health Officer appointed thereunder shall be dismissed without the sanction of the Local Government.

Note.

*Model Rules, under clause (f) of section 351A (1) of the Bengal Municipal Act, 1884, read with section 349H of that Act (as amended by Bengal Act, II of 1914), prescribing the duties of Health Officers of Municipalities outside Calcutta. **

1. The Health Officer of a Municipality shall be directly under the orders of the Chairman, he shall apply to that official in writing for anything that is required for the proper carrying out of the sanitary work of the town. he shall send to him for disposal all questions which may arise in connection with changes in the staff or the administration of the Health Department, and he shall likewise submit for his approval and sanction every recommendation for the sanitary improvement of the town.

2. (1) In a small town the whole of the staff of the Conservancy Department shall be under the direction of the Health Officer and the Sanitary Inspectors subordinate to him, and the Health Officer will be held entirely responsible for the satisfactory working of this department, it being his duty to inspect the conservancy work at frequent intervals, pay regular visits to the trenching-ground, and from time to time satisfy himself by personal observation that his Sanitary Inspectors are diligent in the performance of their duties in this connection.

(2) In a large town which has a special Engineering Department, directed by a responsible Municipal Engineer, and in which street cleaning and conservancy is controlled by this officer, it shall be the duty of the Health Officer to bring to the notice of the Chairman of the Municipality any insanitary condition requiring the attention of the conservancy staff.

* Prescribed by the Government of Bengal under circular No. 990 San. Municipal Department (sanitation), dated 23rd December 1915, addressed to the Commissioner of the Burdwan Division.

180, 191, 192, 195
 199, 199A, 207, 213,
 224, 225, 226, 227,
 229, 230, 231, 232,
 238, 242, 244, 245,
 249, 250, 251, 251B,
 251C, 251D, 253,
 255, 261, 262, 262A,
 263, 273, 274, & 332.

(3) Whenever it shall appear to the Health Officer necessary for the proper sanitation of the Municipality to take action under any of the marginally-noted sections of the Bengal Municipal Act, 1884, he shall report the fact in writing to the Chairman of the Municipality, requesting him to issue the necessary notice and orders.

3. (1) The Health Officer shall regularly inspect the provisions exposed for sale in shops and in the market so that, if necessary, action may be taken under sections 250 and 251 of the Bengal Municipal Act, 1884.

(2) Whenever adequate facilities for chemical analysis are available, the Health Officer shall direct his Sanitary Inspectors to purchase from time to time, samples of milk, ghee, or any other article of food exposed to sale, under section 251D, for the purpose of analysis and shall take action according to the results obtained from such analysis.

4. (1) The Health Officer shall give due attention to the water-supply of the Municipality, particularly if it is derived from public wells or reserved tanks. He must see that all public wells are kept in good repair, that reserved tanks are properly fenced and protected from contamination and that everything is done to ensure the purity of the water.

(2) In towns where a pipe-supply is provided, the Health Officer shall visit the water works from time to time, and if he observes any possible source of contamination of the water or any instances of wastage or defects in the distributory system, he shall bring the facts to the notice of the Chairman of the Municipality.

Reports on the quality of the water will be sent to the Chairman quarterly from the Sanitary Commissioner's laboratory, but if the quality of the water should at any time appear to the Health Officer to be suspicious, he shall report the matter

to the Chairman in order that an additional analysis may be obtained.

5. In all cases of epidemic or communicable diseases the Health Officer must take vigorous steps in consultation with the Chairman for the suppression of the malady. He shall also always keep ready such a stock of disinfectants and disinfecting apparatuses as may be required at short notice in the case of any such outbreak.

6. (1) With a view to framing measures for reducing the prevalence of disease, the Health Officer shall make a careful survey of the distribution of malaria in the town and, for that purpose, shall cause the following works to be carried out systematically throughout the year, namely:—

- (a) the taking of a spleen census among the children resident in different localities;
- (b) the examination and mapping out of the breeding-place of anopholes mosquitoes; and
- (c) the catching and recognition of both larval and adult insects.

(2) When the Health Officer has obtained an accurate knowledge of the distribution and relative intensity of the malaria existing in different parts of the town as a result of this survey, he shall prepare a detailed scheme of anti-malaria sanitation designed to meet the existing conditions, and shall submit it to the Chairman of the Municipality for approval and sanction.

7. (1) The Health Officer shall pay particular attention to the vital statistics of the town. he shall inspect the birth and death registers at frequent intervals, he shall give notice to all the subordinate staff that it is their duty to intimate to his office the occurrence of any births and deaths, he shall see that the municipal vaccinators are diligent in searching for omissions in the register of births. and he shall see that careful watch is kept at burial-grounds and burning-ghats to secure that all deaths are duly recorded.

(2) When omissions are discovered in the register of births and deaths, the Health Officer shall report to the Chairman for taking such action as may be necessary in order that the responsible party may be dealt with according to law.

8. The Health Officer of the town must see that vaccination is carried out thoroughly and efficiently by the vaccinators. In case of default, he shall arrange for the issuing of notices under section 3 of the Bengal Vaccination Act, 1880.

9. It shall be the duty of the Health Officer to submit annually to the Chairman a full report of all the sanitary works and improvements, which have been carried out during the year, and also of those which may be required to be taken up during the next following year. The said report shall be submitted at least a month before the draft budget is prepared.

PART XII.

Miscellaneous.

350. The Commissioners of any municipality may, from time to time, at a meeting Power to make byo-laws. which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such byo-laws as they deem fit, not being inconsistent with this Act, or with any other general or special law for—

(a) regulating traffic, and for the prevention of obstructions and encroachments, and of nuisances on or near roads;

(aa) prohibiting the letting-off of fire-arms, fire-works, fire-balloons or bombs, except (i) with the permission of the Commissioners or a member of the ward committee or a municipal officer empowered by the Commissioners in this behalf, and (ii) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting ;

(b) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells ;

(c) regulating the disposal of sewage, offensive matter, carcasses of animals and rubbish, and the management of privies, drains, cess-pools and sewers ;

(d) regulating cremations and burials and the disposal of corpses ;

(e) preventing nuisances affecting the public health, safety or convenience ; and

(f) giving effect to the objects of this Act ;

and may by such bye-laws impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of fifty rupees for each offence, and in case of a continuing offence a further penalty not exceeding twenty rupees for each day after written notice of the offence from the Commissioners.

Changes.

Clauses (a) to (f) were substituted for the words "for giving effect to the objects of this Act" by sec. 93 of Beng. Act IV of 1894. Clause (aa) was added by sec. 17 of Beng. Act II of 1896.

Notes.

See *Beni-Madhab Nag v. Matilal Dass*, I. L. R. 21 Cal. 837 and notes under sec. 2. The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India—*Emperor v. Bal Kishan*, I. L. R. 24 All. 439. A bye-law must conform with provisions of the enactment under which it purports to be made, *Narain v. Corporation of Calcutta*, 10 C. L. J. 623, 14 C. W. N. 614, I. L. R. 37 Cal. 545.

Cf. *Ramanutar Sahu v. Arrah Municipal District Board*, 11 C. W. N. 1099. Cf. *Tribhovan v. Ahmedabad Municipality* (I. L. R. 27 Bom. 221) in which **Chandavarkar J.** discusses at length the principles upon which the legality or otherwise of bye-laws should be construed. Among others the following observations of the learned judge deserve special notice;—"In virtue of this power (power to make bye-laws not inconsistent with the Act relating to municipal administration) the municipality makes certain rules empowering it to order other things than those specified in the Act itself. The bye-law ordering these other things can be repugnant to or inconsistent with the Act only if it alters and thereby contradicts the Act. 'A bye-law is a local law, and may be supplementary to the general law, it is not bad because it deals with something that is not dealt with by the general law. But it must not alter the general law by making that lawful which the general law makes unlawful, or that unlawful which the general law makes lawful (per Channel J. in *White v. Morley* 1899, 2 Q. B. 34 at p. 39)" p. 255.

350A. The Commissioners of a municipality, wholly or in part situated in a hilly tract may, at a meeting, in addition

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

to such bye-laws as they may make under the last preceding section, make, repeal or alter bye-laws—

for regulating or prohibiting the cutting or destroying of trees or shrubs or the making of excavations or removal of soil or quarrying, where such regulation or prohibition appears to the Commissioners to be necessary for any or all of the following purposes :—

- (a) the maintenance of a water-supply ;
- (b) the preservation of the soil ;
- (c) the prevention of landslips ;
- (d) the formation of ravines or torrents ;
- (e) the protection of land against erosion or the deposit thereon of sand, gravel or stones.

This section is new and has been added by sec. 94 of Beng. Act IV of 1894.

351. Bye-laws made under this Act shall not Confirmation of bye-laws. take effect unless and until they have been submitted to, and confirmed by, the Local Government; nor shall such bye-laws be confirmed—

unless one month at least before the making of the application notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the municipality to which such bye-laws relate, or if there be no such newspapers, then in such manner as the Commissioners may direct; and unless for one month at least before any such application a copy

of the proposed bye-laws has been kept at the office of the Commissioners, and has been open during office hours thereat to the inspection of the inhabitants of the municipality to which such bye-laws relate, without fee or reward.

The Commissioners shall, on the application of any inhabitant of the municipality, furnish him with a copy of such proposed bye-laws, on payment of four annas for every hundred words contained in the copy.

Local Government
may cancel its con-
firmation of any
bye law.

The Local Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.

Changes.

By section 95 of Beng Act IV of 1894 the last paragraph has been substituted for "a bye-law requiring confirmation by the Local Government shall not require confirmation, allowance or approval by any other authority."

Notes.

Procedure to be followed in making bye-laws.

1. All proposed bye-laws must first be considered and approved by the Commissioners at a special meeting under section 350 or section 350A, as the case may be, of the Act.

2. Notice of the intention to apply for confirmation of the proposed bye-laws must be given as prescribed in sections 351 and 354

3. A copy of the proposed bye-laws must be kept at the office of the Commissioners as prescribed by section 351.

4. The proposed bye-laws, and the notice referred to in rule 2, must be translated, deposited, posted up and proclaimed as prescribed by section 354

5. The proposed bye-laws may then be submitted for confirmation, under section 351, to the Local Government, through the Commissioner of the Division.

6. The proposed bye-laws (after such revision, if any, as the Local Government may consider necessary) will be published by the Local Government in draft in the *Calcutta Gazette*. Any objection or suggestion received within a month after such publication will be considered and the bye-laws as then approved and confirmed will be finally published in the *Gazette*.

7. The bye-laws as finally confirmed by the Local Government must also be translated, deposited, posted up and proclaimed within the municipality, as prescribed in section 354 of the Act.

Draft bye-laws and rules.—are to be submitted direct to the Local Government in the Municipal Department and not to the Legal Remembrancer, as it is no longer the duty of the Legal Remembrancer to examine them.—B. G. M. Cir. No. 11 T. M., August 20, 1907.

Procedure for submission for sanction.—Three additional copies of draft bye-laws and rules are to be submitted in all cases in which such drafts are in type-writing or print, and one additional copy only when they are submitted in manuscript. B. G. M. Cir. No. 28 M November 23, 1907 to Comrs. of Dns. (communicating B. G. Cir. No. 179 T Nov 19, 1907.)

351A. (1) The Commissioners at a meeting may from time to time make, repeal or alter rules as to—

Power to make rules as to business, and affairs.

- (a) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meeting, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal;

- (d) the division of duties among the Commissioners, and the powers to be exercised by sub-committees or members to whom particular duties are assigned ;
- (e) the persons by whom receipts shall be granted for money received under this Act ;
- (f) the duties, appointment, leave, fining, suspension and removal of municipal officers and servants ;
- (g) and other similar matters :

(2) Rules made under this section, consistent with this Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

Changes.

This section was added by sec. 95 of Beng. Act IV of 1894. It is based upon section 32 of the Local Self-Government Act III (B. C.) of 1885. Clause (f) has been substituted by sec. 18 of Beng. Act II of 1896.

Notes.

In a municipality, which had adopted, under this section, rule 33 of the Model Rules framed by the Local Government, the question of appointing a paid assessor under section 46 was raised by one of the Commissioners as an amendment to a substantive proposition and such amendment was lost. Within six months, however, the question was again raised as a substantive proposition, without the requisition of two-thirds of the Commissioners and carried. Upon a contention that the appointment of an assessor in terms of such a resolution was *ultra vires*, it

was held that the subject of the appointment of the assessor had not been "finally disposed of" in the previous meeting and that, therefore, its reconsideration in the subsequent meeting was permissible, *Chairman of Chittagong Municipality v. Jogesh Chandra Rai*, I. L. R. 37 Cal. 44

As to submission of rules under this section for sanction by the Local Government see notes to section 351.

352. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any person offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

Commissioners
may direct prosecution
for public nuisance, &c

Public nuisance—for the definition of. see sec. 268, Indian Penal Code, and *Khagendra Nath Mitra v. Bhupendra Nath Dutta*, I. L. R. 38 Cal. 296, 15 C. W. N. 316

Not legalized by length of time.—No one has a right to corrupt the air of a particular locality by the exercise of a noxious trade, simply because, at the commencement of the nuisance, no person was in a position to be injured by it; and no prescriptive right can be acquired to maintain, and no length of time can legalize a public nuisance, *Municipal Commissioners of the Suburbs of Calcutta v. Ruhomotollah*, 14 W. R. 67, C. R. Of. *Preo Nath Dey v. Gobordhone Malo*, I. L. R. 25 Cal. 278.

There can be no prescription to send sewage into a public river,—*Gale*, 484, note.

353. No prosecution for an offence under this Act or any bye-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution

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

tion shall be instituted except within six months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within six months of the date on which the commission or existence of the offence was first brought to notice of the Chairman of the Commissioners :

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

Changes.

The word 'six' has been substituted for 'three' by sec. 97 of Beng. Act IV of 1894.

Notes.

Consent of Commissioners.—Commissioners in this section means the Chairman or the Vice chairman, delegated with the powers of the Chairman, *see* secs. 44 and 45 and notes thereunder.

"The only evidence of sanction of prosecution by a public authority is a writing under the seal and signature of that authority."—*Basul Buksh v. Municipal Board of Chapra*, 16 C. W. N. 954. *See*, however, the case of *the Chairman of Hughli Chinsura Municipality v. Krista Lal Mullick* (20 C. W. N. 824), where it was held that there was no legislative enactment which required a sanction for prosecution to be under seal and the affixing of a seal to such a sanction was not necessary in the absence of such enactment.

Sanction of Government —On a reference made by the Municipal Magistrate of Calcutta asking the opinion of their Lordships as to whether the Administrator-General of Bengal, who

was in charge of certain premises appertaining to an estate not by virtue of his office but by virtue of his appointment by the Court as administrator to the estate, could be prosecuted without the sanction of Government under sec. 197 of the Criminal Procedure Code for failing to comply with a requisition under the Calcutta Municipal Act (Beng. Act III of 1891), it was held that no sanction was necessary in the case, *Municipal Corporation v. Administrator-General of Bengal*, 7 C. W. N. 750.

Institution of Prosecution.—As to court-fee, &c., see notes under *Penalties* (pp. 228-235)

Continuous offence.—The Legal Remembrancer in his letter No. 416, dated 12th March, 1874, to the Secretary, Howrah Municipality, expressed his opinion that when an offence is repeated, every successive act is an offence.

In the case of an obstruction or encroachment a person would be liable if he continued it within six months of the prosecution, and a prosecution may be continued for each day until he removes the obstruction.

Continuation of offence.—See *Corporation of Calcutta v. Jadub Doolay*, I. L. R. 20 Cal. 665.

Offence under this Act.—The powers conferred upon the Commissioners by this section are restricted to the prosecution for offences under this Act or bye-laws framed under it. So where the Chairman of a municipality ordered a prosecution under sec. 199 of the Indian Penal Code, the High Court held that the Commissioners had no power to institute such a prosecution, *Abdul Rahaman v. Chundi Persad*, I. L. R. 22 Cal. 131.

Limitation.—In the case of a continuous offence, a prosecution instituted six months after the fact of its commission being brought to the notice of the Chairman is barred by the provision of this section, *Lutti Singh v. The Behar Municipality*, 1 C. W. N. 492. This section bars all prosecutions under the Act or under bye-law unless they are instituted within *three (six) months* next after the commission of such offence or within *three (six) months* of the date when such commission of the

offence is brought to the knowledge of the Chairman, *Bidhu Bhusan Mullick v. Asansole Municipality*, 6 C. W. N. 167. Compare *Kumud Kumari Dasi v. Corporation of Calcutta* (I. L. R. 34 Cal. 909) as to construction of the rule of limitation (11 C. W. N. 1097); cf. *Emperor v. Nadirsha*, I. L. R. 29 Bom. 35.

Court-fee.—Petitions of complaint by municipal officers are not chargeable with Court-fee.—See sec. 19, cl. xviii, Court Fees Act (VII of 1870).

Commission of offence.—Cf. *Corporation of Calcutta v. Keshub Chandra Sen* (8 C. W. N. 142), *Chuni Lal Dutt v. Corporation of Calcutta* (11 C. W. N. 30, 4 Cr. L. J. 408), *Sarat Chandra Mukherji v. Corporation of Calcutta* (14 C. W. N. 591, I. L. R. 37 Cal. 384) in which it has been held that the limitation prescribed in section 631 of the Calcutta Municipal Act relates only to prosecution for an offence under the Act; and as proceedings in the Magistrate's Court for the enforcement of requisitions under the Act are not prosecutions for commission of offence, the bar of limitation does not apply to such proceedings. See **Proceedings before the Magistrate** under secs. 202, 203, 204 & 233.

354. Every bye-law, order, notice or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct.

And a public proclamation shall be made throughout such municipality by beat of drum notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

355. Fines under this Act may be imposed by a Magistrate on any person who is convicted of the offence to which the fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.

Procedure, &c. See under *Penalties* (pp. 223-235).

Disqualification of Magistrate.—A Magistrate who is personally concerned in the prosecution or who is a salaried officer of the municipality is disqualified from trying a case under this Act.—See sec. 555 Cr. P. Code, *Khurack Chand Pal v. Taruck Chander Gupta*, I. L. R. 10 Cal. 1030 and *Nabin Kristo Mukherjee v. The Chairman of the Suburban Municipality* I. L. R. 10 Cal. 194.

The mere fact that a Magistrate is the Vice President of a District Municipality and Chairman of the managing committee does not disqualify him from trying a charge of an offence brought by the municipality under Bombay Act VI of 1873. But if he has taken any part in promoting the prosecution, as for instance by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every municipal Commissioner in the affairs of the municipality—*Queen Empress v. Pherojsha Pestonji*, I. L. R. 18 Bom. 442; see also *The Queen v. Lee*, 9 Q. B. D. 394 and *The Queen v. Handly*, 8 Q. B. D. 388.

In the unreported case of *Empress v. Sutto Ohurn Ohatterjee*, who was prosecuted under sec. 273, clause 2 of the Bengal Municipal Act before a Bench of Magistrates, presided over by a gentleman who was the Chairman of the municipality, Banerji J. held that the disqualification created by sec. 555. Cr. P. Code, holds good in his case and the exception introduced by the explanation does not apply to it. His Lordship was pleased to observe “the gentleman, who presided over the Bench that tried the accused, was something more than a mere municipal Commissioner. He was the Chairman of the municipality, and as such the executive

head of that body and it was under his orders that the prosecution was instituted".—*Amrita Bazar Patrika*, Oct. 19, 1894. See also *Queen Empress v. Erugudu*, I. L. R. 15 Mad. 83.

In the case of *Wood v. The Corporation of the Town of Calcutta*, (I. L. R. 7 Cal 322) it was held that the proceedings and ultimate conviction of A were illegal, in as much as B being a servant of the prosecutor, i.e. the Corporation, had such an interest as might give him a bias in the matter, and that consequently he ought not to have sat as Justice of the Peace, either at the granting or upon the hearing of the summons.

Extends to appeals.—A Magistrate, who is also the Chairman of a municipality, is no less disqualified to try a case sanctioned by the Vice-Chairman, who acts with delegated authority. The expression "try any case" in sec. 555 of the Cr. P. Code is comprehensive enough to include the hearing of an appeal.—*Nistarini Debì v. A. O. Ghosh* I. L. R. 23 Cal. 44. See also *Molant Sukdeo v. District Board of Muzafferpur*, 16 C. W. N. 284 (notes).

Code of Criminal Procedure, 1882—was repealed by the Code of 1898 (India Act V of 1898).

356. Every notice, bill, form, summons or
How notice, &c,
may be served. notice of demand under this Act may
 be served personally on or presented
 to the person to whom the same is addressed ;

or be left at his usual place of abode with some adult male member or servant of his family ;

or, if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode ;

or of the land, building or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

The notification under sec. 180 is to be posted on or near the spot where the acts required are to be executed.

357. When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner or occupier, as the case may require, may be served on the occupier of such land, or otherwise in the manner in the last preceding section mentioned :

Service of notice
on owner or occu-
pier of land.

Provided that, when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family ;

and, if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

When the name of the owner or occupier is not known it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is served.

For the definition of the term **owner** see sec. 6. cl. (11).

358. No assessment or rating of tax on property shall be invalid for error or defect of form, and it shall be enough in any assessment, valuation or rating for the purpose of making such tax if the property so assessed or valued is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

Notes.

In a case under the Calcutta Municipal Act, in which the corporation had distrained moveables without previous presentation of bills or notice of demand, it was *held*, in view of section 225 of the Act, the wording of which is somewhat similar to this section, that the omission to present bills and notice of demand amounted to a mere irregularity and the distress which was levied could not on that account be deemed unlawful, *Bipin Chand Biswas v. The Corporation*, I. L. R. 31 Cal. 452 (472).

359. Every person to whom a license has been granted under this Act shall at all reasonable times, while such license shall remain in force, if thereunto required by the authorities which granted the license or by any person authorised by them in that behalf, produce such license to the said authorities or to the person so authorized.

Whoever fails to produce his license when required to produce the same by any person authorized under this section to demand the production thereof shall be liable to a fine not exceeding one hundred rupees.

Holder of license
to produce it when
required.

Penalty.

360. All costs, expenses, fees, tolls or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 120 to 129 (both inclusive).

Recovery of
moneys due to the
Commissioners.

Note.

Compare *Abdul Azeez Shahib v. Uddapah Municipality* (1. L. R. 26 Mad. 475) wherein it has been held that money due under a contract entered into with a municipality for the right to collect tolls in consideration of money payment is neither "rent" nor "toll" and as such the summary procedure of the Act for its realisation is not applicable to such a case.

361. If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and, after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase money.

Power to sell un-
claimed holdings for
money due.

After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the municipal fund and may be paid on demand to any person who establi-

shes his right to the satisfaction of such Commissioners or in a court of competent jurisdiction.

Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a court of competent jurisdiction from any person beneficially interested in such property.

362. The Commissioners may make compensation out of the municipal fund to Compensation for damages. any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

Damage—evidently means actionable damage, *i. e.*, loss caused by an unauthorised interference with private rights resulting in a breach of law (*See Underhill on Torts, page 7*).

Scope of the section.—This section gives power to the Commissioners to make compensation for any damage caused to any person by any act done in pursuance of the powers conferred by this Act, and to compromise any suit or threatened action for damages which any person may have sustained by reason of their exercising their statutory powers in excess or violation thereof. It is not the intention of the Legislature that it should apply to every case of damage even where there is no improper exercise or breach of the statutory powers. In the case of *Moran v. Chairman of Motiluri Municipality*, (I. L. R. 17 Cal. 329) the Subordinate Judge found that the Commissioners in refusing license had acted legally and in proper exercise of their powers, and also found that the plaintiffs had suffered loss of income from their market in consequence of such refusal, and was of opinion that the refusal of the license was an act done in the exercise of powers conferred by the Act within the meaning of sec. 362 and that under secs. 362 and 363 the Court could award compensation. The High Court (*Pigot and*

Rampini JJ.) was pleased to observe "we must be satisfied that it was the duty of the Municipality under the provisions of the Act to issue the license which they refused: for breach of such a duty they might perhaps be liable in damages. *The Municipality was legally entitled to refuse the renewal of the license. **It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside".

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

The Commissioners are liable for the act of their contractor, and where the work is necessarily attended with risk, they cannot free themselves from their liability by employing a contractor.—*Dhendiba Krishanaji v. The Municipal Commissioners of Bombay*, I. L. R. 17 Bom. 307. See also *London County Council v. Jackson*, 16 C. W. N., 159 (notes.)

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

In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held by the High Court (*per* Henderson J.) that the Corporation having granted, after due inquiry, sanction to erect a building, is not entitled, in an action for damages caused by the withdrawal of the sanction, to plead in defence

that its officer made a mistake, and that the sanction was not binding.—*Tullaram v The Corporation of Calcutta*, I. L. R. 30 Cal. 317.

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

Non-feasance. See *Dholka Municipality v. Patel Desai* (I. L. R. 38 Bom. 116) where the extent of liability of a local body for non-feasance was discussed and it was held that the exemption from liability was confined to neglect of highways. See also *Papworth v. Battersia Borough Council*, 18. C. W. N. 95 (notes).

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

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

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

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

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

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

See *Municipality of Ratnagiri v. Vasudeo Balkrishna* (I. L. R. 39 Bom. 600) where it has been held by the Bombay High Court upon a review of provisions similar to those contained in this Act that the dismissal of a Municipal officer is an act done or purporting to have been done under the Act.

Cause of suit and cause of action—seen to mean the same thing. Compare with this section 634, cl. (1) of the Calcutta Municipal Act and the interpretation given to it in *Corporation of Calcutta v. Shyama Charan Pal*, I. L. R. 32 Cal. 277, 9 C. W. N. 217.

The plaintiff's cause of action accrued on August 30; he served the notice under this section on October 28, filed the plaint on November 28, which was returned and refiled on December 1. The objection that the suit was premature was not taken in the written statement but in the course of argument: *Held*, that, if the suit be considered to have been instituted on December 1, it was barred by limitation, and, if it be considered to have been instituted on November 28, it was premature by one day under the 1st paragraph.

Held, further, that a plea of want or insufficiency of notice may be taken in the course of argument, though not taken in the written statement, *Bisambhar Lal v. Chairman of the Municipal Board of Chapra*, 5 Ind Cas. 81.

Damages.—In the case of *Chunder Shekhar Banerji v. Abhay Churn Bagchi*, (I. L. R. 6 Cal. 8, F. B.) Garth, O. J., held “that section, (that is, section 87 of Act III of 1864) as it seems to us, is applicable only in those cases where the plaintiff claims damages for some wrongful act committed by the Commissioners or their officers in the exercise, or the honestly supposed exercise of their statutory powers”. In the case of *Sudhangshu v. Bejay Kali* (3 C. L. J 376), which was one for declaration that a tax imposed was not binding for reasons stated, Maclean, O. J., was pleased to hold that the construction put upon section 87 of the Act of 1864, which does not differ from the present, by the Full Bench in the case of *Chunder Shekhar* was binding upon him; although his lordship expressed a doubt whether he would have arrived at the same conclusion, if the matter had come before him *res integra*. Cf *Greenway v. The Municipal Board of Cawnpore*, I. L. R. 28 All 600, and *Mahamahopadaya Ranga Charari v. The Municipal Council of Kumbakonam*, I. L. R. 29 Mad. 539 (545). See also *Bhourab Chundra Banerjee v. Makgill*, 17 W. R. 215. In the case of *M. L. Lal Bose v. The Howrah Municipality*, 23 W. R. 222, the defendant corporation had prosecuted the plaintiff for allowing a piece of land to be covered with jungle and night-soil, and had procured the infliction on him of a fine which they realized by the attachment and sale of his moveable property. The plaintiff brought the suit for the value of the goods and for damages. It was held that the suit could not be maintainable. The Municipal Commissioners are liable to be sued for damages for any breach of their statutory duty which results in injury. See *The Corporation of the Town of Calcutta v. Anderson*, I. L. R. 10 Cal. 445. The words “anything done” in the section refers to *tortious acts* and not to any act arising out of a *contractual* or *quasicontractual* basis. Accordingly a suit for the refund of money paid under protest can be maintained without a notice under this section, *Ambica Charan Mazumdar v. Sotish Chundra Sen*, 2 C. W. N. 689. No notice under this section is required to bring a suit for restitution of lands taken over by a Municipality.

pality.—*In Re Chairman of Bhagalpur*, 3 O. L. J. 544. In a case under the Calcutta Municipal Consolidation Act (Beng. II of 1888) it was held (*per* Henderson J.) that the corporation having withdrawn a sanction on the ground that the plaintiff had not complied with what it believed to be his undertaking, the withdrawal of the sanction was not done, nor did it purport to have been done under the Act; and the suit for damages having been based upon such withdrawal, the special limitation provided in the Act did not apply, *Tullaram v. The Corporation of Calcutta*, I. L. R. 30 Cal. 317. This section does not apply to suits for recovery of land. See *Price v. Khelat Ohandra Ghose*, 5 B. L. R. App. 50. *The Municipal Committee of Moradabad v. Chattri Sing*, I. L. R. 1 All. 269 and *Poorna Ohundra Rai v. Balfour*, 9 W. R. 535. It is doubtful whether a notice under this section is necessary when a suit is not for “anything done” under the Act, but for something left undone, which a Municipality is bound to do, *Peari Mohan Mukerjee v. Ambica Charan Bandopadhyaya*, I. L. R. 24 Cal. 900 (903).

Burden of proof.—In a suit for damages against a municipality for negligence in the exercise of statutory powers, it was held by the Bombay High Court that the onus lay on the party alleging it; and if neglect in the execution of their statutory powers and duties is not brought home to the Municipality a suit must fail as unsustainable in law, however great the damage sustained by the plaintiff, *Municipality of Hubli v. Lucus Eustratio Ralli*, I. L. R. 35 Bom. 492.

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

been sufficient. The section requires the notice to state with reasonable particularity the cause of action.—*Dhandiba Krisnaji and others v. The Municipal Commissioners of Bombay*, I. L. R. 17 Bom. 307.

The Municipal Commissioners are entitled to one month's notice of action when they have been acting *bona fide*, in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover thereof.—*Gopce Kissen v. Mr. W. H. Ryland and others*, 9 W. R. 280. A member of a Municipal Board charged with the supervision of the sanitation of the town and acting in such capacity made a report to the Board, which resulted in the prosecution of certain persons for a municipal offence. The persons prosecuted were acquitted, and thereafter filed a suit for damages for malicious prosecution against the maker of the report. It was held that the defendant was entitled to a notice, *Jugal Kishore v. Jugal Kishore*, I. L. R. 33 All. 540. A notice objecting to, and asking for a reconsideration of, the order complained of, is not sufficient.—*Abhoy Nath Bose v. The Chairman of the Krishnagur Municipality*, 7 W. R. 92. The notice previous to suing a Municipal Committee for a thing done by them under the Municipal Act is only necessary where compensation is claimed for the thing done—I. L. R. 1 All. 269. In Bombay in a suit brought to obtain a declaration that a certain building erected by the plaintiff has been built in accordance with, and not in contravention of orders issued by the municipal authorities and also an injunction restraining the said authorities from pulling it down, the contention was that the suit was not maintainable without notice. The Bombay High Court, upon a review of the previous authorities on the subject, was pleased to hold that no notice was necessary. Their Lordships observed—"The result of the cases above cited appears to indicate, that for the purposes of section 48 (a section very similar in its terms to the present one.—Ed.), what the Court has to look to is the real object of the suit, and the section requires notice only when the suit is for an act already done or

purporting to have been already done, under the powers conferred. In such case only can it be necessary for the plaintiff to give an opportunity to make amends or compensation, and in such case the delay necessitated by notice is comparatively immaterial. But when the suit is not for an act already done, neither can amends be claimable, nor can delay be obligatory.—*Municipality of Parola v. Lakshmandas*, I. L. R. 25 Bom. 142. Upon a construction of a similar section of the Madras Local Boards Act V of 1884, a Full Bench of the Madras High Court held that no notice of action was necessary in a suit for injunction and that the class of suits for which notice was necessary should be co-extensive with the class of suits to which special limitation was applicable, *Govinda Pillai v. The Taluku Board, Kumbakonam*, I. L. R. 32 Mad. 371 M. L. T. 209. The plea that no notice was given cannot be taken for the first time in special appeal—*The Municipal Committee of Moradabad v. Chatri Sing*, I. L. R. 1 All 269. The notice must be addressed to the Chairman, otherwise a suit against a Municipality is not maintainable.—*Mani Kasana Dhan v. Crooke, Secretary to the Municipal Committee of Gorukpur*, I. L. R. 2 All. 296. The cause of action must be disclosed in the notice, and no other cause of action can be raised at the trial.—*Ullman and others v. The Justices of the peace for the Town of Calcutta*, 8 B. L. R. App. 265.

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

The object of the notice is to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation (I. L. R. 6 Cal. 8, F. B.)

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

Limitation.—Duthoit, J., ruled that the question whether the special limitation provided by sec. 43, Act XV of 1873 (the N. W. P. and Oudh Municipalities Act) applied or not was to be determined by deciding whether the suit was brought in respect of anything done under the aforesaid Act or not. If it was, then the limitation provided by sec. 43 prevailed; if it was not, the ordinary law of limitation was the one to be applied.—*Brij Mohan Sing v. The Collector of Allahabad as President of the Municipal Committee*, I. L. R. 4 All. 102. See also *Tullaram v. The Corporation of Calcutta*, I. L. R. 30 Cal. 317.

This section applies to a suit for damages for an act, which purports to have been done under section 202, when there is nothing to show that proceedings had not been taken *bona fide*. *In Re Bishnu Pada Chatterjee*, 3 C. L. J. 36n. This case was followed in *Shama Bibee v. Chairman of Baranagore Municipality* (12 C. L. J. 110) where it has been further held that when the act complained of is done in good faith and there is reasonable and probable cause for a criminal prosecution, the provision of this section must be applicable to a suit for damages for malicious prosecution.

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

In the case of *Hughes and others v. The Municipal Commissioners of Howrah*, (16 W. R. 339) the act complained of was the illegal seizure of an omnibus, and Couch C. J. held that

the three months' limitation must be counted from the date of the seizure, and the continued detention of the omnibus could not be treated as fresh causes of action from day to day. See also *Dwarka Nath Gupta v. The Corporation of Calcutta*, I. L. R. 18 Cal. 91.

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

Under sec. 24 of the Limitation Act, the period of limitation in a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, shall be computed from the time when the injury results. Cf. *Richard Watson v. Municipal Corporation of Simla* (72 P. R. 1909, 108 P. L. R. 1909, 2 Ind. Cas. 819) in which it has been held by the Punjab Chief Court, that the mere fact that damage resulted not immediately, but after the lapse of some months does not affect the applicability of the special law of limitation, though it does, under section 24 of the Limitation Act, postpone the cause of action, until such time as the damage occurred. Where compensation for damages is sought in respect not of the original act done by a public body under statutory powers, but of the consequences of such act, he must sue within 3 months from the date when the injury resulted.

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

364. Notwithstanding anything contained in
 Chaukidari Chak- section 3 of Bengal Act VI of 1870
 ran lands. (an Act to provide for the appoint-
 ment, dismissal, and maintenance of village chaukidars)
 the provisions of Part II of the said Act, relating

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

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

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

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

he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

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

Changes.

The words, "or any bye-law made in pursuance thereof" in the first paragraph, and the last paragraph have been added by sec. 98 of Beng. Act IV of 1894.

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

Penalty on officers,
&c., taking unauthor-
ized fees

Saving clause

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

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

Note.

No mandatory injunction may be granted against a private individual for what is a mere nuisance in law, (*i.e.*, that which is only wrong because it contravenes the provisions of an Act), except where such nuisance has been created and persisted in defiance of a local authority and such local authority has not sufficient power to enforce compliance with the law, *The Advocate-General of Bombay v. Haji Ismail Hasham*, I. L. R. 12 Bom. 274, 5 Ind. Cas. 213.

THE FIRST SCHEDULE.

(See Sections 8 & 17.)

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

Municipality.

Asansol.
Kamarhati.
Garden Reach.
Titagar.
Garulia.
Bhatpara.
Santipur.
Nalchitti.
Chandpur.
Lalgunj.

Municipality.

Nawabganj.
Lohardaga.
Jhalda.
Raghunathpur
Madhupur.
Khagole.
Katihar.

THE SECOND SCHEDULE.

(See Sections 8 & 23.)

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

<i>Municipality.</i>	<i>Municipality.</i>	<i>Municipality.</i>
Asansol.	Hazaribagh.	Somastipur.
Sonamukhi.	Coxe's Bazar.	Kishanganj.
Dainhat.	Giridih.	Nawabganj.
Budge-Budge.	Chattra.	Dumka.
Garden Reach.	Ranchi.	Daltonganj.
Garulia.	Lohardaga.	Jhalda.
Bhatpara.	Chaibassa.	Ragbunathpur.
Santipur.	Purulia.	Madhubani.
Birnagur.	Patna City.	Siwan.
Chakdaha.	Dinapur.	Bettiah.
Maheshpur.	Gaya.	Jajpore.
Kandi.	Tikari.	Kendrapara.
Darjeeling.	Daudnagar.	Chandpur.
	Sasaram.	
	Bhubhua.	
	Sitamarhi.	
	Darbhanga.	

THE THIRD SCHEDULE.

Form A.—(See Section 112)

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

BENGAL MUNICIPAL ACT, 1884.

(Section 112)

MUNICIPALITY OF

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

Dated this day of

A. B.,
Chairman of Commissioners.

Form B.—(See Section 112.)

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

BENGAL MUNICIPAL ACT, 1884.

(Section 112.)

MUNICIPALITY OF

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

Dated this day of

A. B.,
Chairman of Commissioners.

THE FOURTH SCHEDULE.

Form A —(See Section 120.)

Notice of Demand under Section 120.

BENGAL MUNICIPAL ACT 1884

To

MUNICIPALITY OF

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

A. B.,

Chairman of Commissioners.

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

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

FORM B.—(See Section 121.)

TABLE OF FEES PAYABLE UPON DISTRAINTS
UNDER THIS ACT.

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

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

Form C.—(See Section 122.)

Distress Warrant.

BENGAL MUNICIPAL ACT, 1884.

(Section 122).

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

Whereas _____ of _____ has not paid or shown sufficient cause for the non-payment of the sum of rupees _____ due for taxes (or rates) mentioned in the margin although the said sum has been duly demanded in writing from the said _____, and fifteen days have elapsed since the service of the notice of demand, this is to require you to distrain the moveable property of the said _____ wherever it may be found within the municipality, except ploughs, plough-cattle, tools or implements of the trade or agriculture, or any other moveable property subject to the same exceptions, which may be found within the holding specified in the margin to the amount of the said sum of _____ and the further sum of _____ to defray the charges of taking, keeping and selling such property; and if within ten days next after such distress the said sum of _____ shall not be paid, to sell the said property, and having paid and deducted out of the proceeds of the sale the said sum of _____ and the charge of taking, keeping, and selling such property, to return the surplus (if any) on demand to the person whom you shall have found in possession of the said property, and if no demand be made, to pay the same to the Commissioners. If distress cannot be made of sufficient property of the said _____, you are to certify the same to us in returning this warrant.

Form D.—(See Section 122)

Form of Inventory and Notice.

BENGAL MUNICIPAL ACT, 1884

(Section 122.)

(State particulars of goods seized.)

Take notice that I have this day seized the property specified in the above inventory for the sum of due for the taxes (or rates) mentioned in the margin, and that unless you pay to me or into the office of the Commissioners of the said sum of and the costs of this distraint as specified below, within ten days from the day of the date of this notice, the property will be sold.

(Signature of the officer executing
the warrant of distress)

Costs of distraint—

Date

—————

Form E.—(See Section 124)

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

1. Name of defaulter.
2. Number on register and specification of the holding on account of which the arrear is due.

3. Amount of arrear due.
 4. Amount of costs and penalty.
 5. Total amount to be realized.
 6. Inventory of property seized under distress.
 7. Date of distress
 8. Date of sale
 9. Detail of articles sold
 10. Amount realized on each article.
 11. Purchaser's name.
 12. Total amount realized.
 13. Amount paid into the Commissioners' office on account of arrear due, with date.
 14. Amount paid into the Commissioners' office on account of costs and penalties
 15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due.
 16. How the surplus was disposed of, with date of such disposal
 17. Balance of arrear still remaining unrealised, if any.
 18. On what date such remaining balance was realized or written off by authority.
 19. Remarks (explaining why the property seized was realized without sale if not eventually sold, &c)
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THE FIFTH SCHEDULE.

(See Sections 86 and 131.)

TAX ON CARRIAGES AND ANIMALS.

				Per quarter. Rs. A.
For every 4-wheeled carriage drawn by two horses	...			4 8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under 13 hands	...	...		3 0
For every 4-wheeled carriage drawn by one pony under 13 hands	...	...	..	2 8
For every 2-wheeled carriage	...	...	...	2 8
For every horse	...	...	...	2 0
For every pony under 13 hands, and for every mule and donkey	...	..	...	0 12
For every elephant	...	...	...	6 0
For every camel	...	...	...	2 0
Carriages the wheels of which do not exceed twenty-four inches in diameter are exempted.				

Changes.

By sec. 99 of Beng. Act IV of 1894 the words and figures "for every 4 wheeled carriage drawn by one pony under thirteen hands—2-8" were added.

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

THE SIXTH SCHEDULE.

*(See Section 2 & 4.)**Act of the Governor-General in Council.*

Number and year.	Subject.	Extent of Repeal.
XI of 1857...	To make better provision for the order and good government of the station of Howrah.	Sections 4, 5, 6, 8, 9, 16, 17, 24, 33, 34, 35, 36, 37, 39, 46.
	<i>Acts of Bengal Council.</i>	
of 1873 ...	To provide for the levy of a lighting rate in Howrah.	The whole Act.
of 1876 ...	To amend and consolidate the law relating to Municipalities.	Ditto.
I of 1878 ...	To provide for the cleansing and construction of latrines in first class Municipalities.	Ditto.

APPENDIX.

GOVERNMENT CIRCULARS

AND

RULES UNDER THE ACT.

GENERAL CIRCULARS.

I.

Dated Calcutta, the 24th March.

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

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

No. 1409S. R.,

Dated Calcutta, the 24th March 1898.

FROM—J. F. Finlay, Esq.,

Secretary to the Govt. of India,

Finance and Commerce Department.

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

I am directed to acknowledge the receipt of your letter (No. 126XI—414A.) dated the 21st Sep. 1897, on the subject of stamping copies of municipal records.

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

3. I am to say that, in the opinion of the Government of India, when a copy of a document is taken for private use only

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

4. After careful consideration of the suggestion made by His Honour the Lieutenant-Governor, the Government of India are of opinion that when certified copies of municipal records are required, they should be stamped, but that there is nothing which need prevent the issue by the secretary of a municipality of uncertified and unstamped copies of such records when required for private use.

II.

MUNICIPAL.

No. 3339 M.

Calcutta, the 20th December 1901.

FROM—H. M. KISCH, Esq.,

Offg. Secretary to the Government of Bengal.

TO—The Commissioner of the Patna Division.

Sir

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

2. In reply, I am to point out that an officer appointed by official designation to be Chairman continues to occupy that post

from the date of his appointment up to the date of the reconstitution of the body of Municipal Commissioners irrespective of intermediate changes in the personnel of the officer appointed *Ex-Officio*. The resignation of each individual officer on the occasion of a transfer is therefore unnecessary.

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

III

MUNICIPAL.

CIRCULAR No. 14T.—M.

Darjuling, the 2nd September, 1902.

FROM—E. W. COLLIN, Esq.,

Offg. Secretary to the Government of Bengal.

TO—All Commissioners of Divisions (except Burdwan).

SIR,

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

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

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

OPINION.

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

30th August 1902. }

J. T. WOODROFFE.

Advocate-General.

No. 1291.

Dated Calcutta, the 19th October 1901.

FROM—THE HON'BLE B. L. GUPTA,

Supdt. and Remembrancer of Legal Affairs.

TO—The Commissioner of the Patna Division.

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

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

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

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

IV.
MUNICIPAL

CIRCULAR No 18 M

Calcutta, the 7th November, 1902.

FROM—E. W. COLLIN, Esq.,

Offg. Secretary to the Government of Bengal.

TO—All Commissioners of Divisions, (except the Burdwan Du)

SIR,

The attention of Government has been drawn to the ruling of the High Court in the case of **Emperor versus Mathura Prosad**, published at page 491 Volume XXIX, part VII of the Indian Law Reports, Calcutta Series, which is likely to have a prejudicial effect on the working of the building regulations in mofussil municipalities. It will be seen that the reference of the Sessions Judge was for setting aside the order for demolition, which appears to have been irregularly passed under section 238 (1) of the Bengal Municipal Act by the Subdivisional Magistrate, whereas such an order can only be passed by the Commissioners. The High Court, however, set aside the conviction under section 273 (1) as well as the order for demolition. The Legal Remembrancer, who has been consulted in the matter, is of opinion that the learned judges overlooked sec. 240 of the Act which gives a definition of the terms "erect" and "re-erect," and which if referred to, would have altered the aspect of the case. I am to observe that the decision should not be permitted to influence the actions of municipalities in enforcing the building regulations and to request that, in the event of any application or reference being made to the High Court against a conviction under section 273(1) of the Bengal Municipal Act, the Legal Remembrancer may be promptly informed by the District Magistrate, so that he may cause the Crown to be represented at the hearing of the case before the Court.

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

V.

APPEALS IN WHICH MUNICIPALITIES ARE CONCERNED.

In Land Acquisition Cases.

The Bengal Government issued the following orders as to the means to be adopted for the recovery of the costs of litigation in appeals in the High Court in land acquisition cases undertaken by Government on behalf of, or at the instance of, Municipalities and other Local Bodies and Institutions —

“I am directed to acknowledge the receipt of your letter No. 217, dated the 6th May 1901, and its enclosures, on the subject of the means to be adopted for the recovery of the costs of litigation in appeals in the High Court in land acquisition cases undertaken by Government on behalf of, or at the instance of, Municipalities and other Local Bodies and Institutions.

2. “With regard to the recovery of the sums which have already been advanced by your office and have not yet been recovered from the bodies or institutions concerned, I am directed to request that in each case you will be so good as to advise the Collector of the amount outstanding and to request him to take steps for its recovery. You should, at the same time, inform the Accountant-General, so that he may know what recoveries are to be made.

3. “As to the procedure to be followed in the future, you should, I am to say, advise the Collector, in each instance, of any

* B Govt., Mun. Dept., Nos. 1733 & 361 M, dated 17th Oct. 1901, to Legal Rembr., Board, &c

sums advanced or required, and request him to deposit to the credit of the litigation fund equivalent amounts out of the funds placed at his disposal by the Local Body or institution concerned, and to furnish you with a duplicate chalan for the amount deposited. If at the time the Collector has not sufficient fund in his hands, he will at once obtain the amount required from the party interested. The Accountant-General, Bengal should also be advised by means of a copy of your advice to the Collector, or in such other way as he (the Accountant-General) may desire, so that he may be able to see that for each item in your accounts on behalf of any party other than Government there is a corresponding credit."

*To Privy Council.**

The Government of India issued the following Circular 'to Local Governments :—

"With reference to the correspondence ending with Home Department Endorsement No. $\frac{22}{1431-33}$, dated 24th August 1887, I am directed to point out that when an appeal, to which a Municipality is a party, is preferred to the Privy Council, the duty of making arrangements for the conduct of the case must be undertaken by the Municipality concerned and that the information and papers required by Home Department letter No. 1—121-26, dated 30th January 1878, should be forwarded to the India Office through the Government of India only in cases to which the Government or the Court of Wards is a party. In this connection I am to request that the instructions contained in the accompanying Extract* of a Despatch from the Secretary of State may be strictly observed in cases to which Government or the Court of Wards is a party.

* I. Govt., Home Dept., Nos. 1276 82, dated 9th Sept 1889.

* B. Govt., Judl. Dept, Cir. No. J. $\frac{4A}{12}$ 4, dated 8th Novr. 1889, to all Offrs

B. Govt. Munl. Dept., Cir No. M. $\frac{3M}{5}$ 5, dated 22nd Augt 1890, to Commrs.

No. 21 (Judicial), dated the 4th July 1899, from the Secretary of
State for India.

With reference to the letter of your Excellency in Council,
No. 19, dated the 14th of May,
Maharaja Luchmeswar Singh
Bahadur of Darbhanga appellant, *versus* the Chairman of Dar-
bhanga Municipality, respon-
dent, transmitting a Special Narrative
submitted by the Government of
Bengal, and other papers relating
to the case mentioned in the margin, which is now pending in ap-
peal before the Privy Council, I have to request that I may be
furnished with full and distinct particulars as to the object with
which these documents have been transmitted, and the steps
which you expect or wish me to take regarding them.

2. I observe that the Darbhanga Municipality are the res-
pondents, the suit being (in accordance with the provisions of
section 29 of the Bengal Council's Act III of 1884) brought
against them as a body corporate, by the description of "the
Chairman of the Municipal Commissioners of Darbhanga."

3. That being so, it is *prima facie* the business of the Muni-
cipality to conduct the litigation and to bear the costs attendant
on it. From the terms of your Government's letter now under
reply, it seems probable that your intention is that the matter
shall be treated as if Government were the respondent. If such,
however, be your intention, I desire that I may be fully informed,
as soon as possible, of the reasons for adopting such a course, and
also whether you think it necessary to forward an authority from
the Municipal Board to enter an appearance on its behalf.

4. I avail myself of this opportunity to request that, as
regards all appeals to Her Majesty in Council, in which Govern-
ment is interested, I may in each case be furnished with a distinct
expression of the opinion of the Government transmitting the
papers, as to the course which ought to be adopted by me. It not
unfrequently happens (as it has happened in this case of the Ma-
haraja of Darbhanga) that the papers reach this office unaccom-
panied by any clear indication of the steps which it is desired I

should take, and it is necessary that I should always receive such an indication for my assistance in arriving at a decision in the matter.

VI.

ELECTION RULES.

NOTIFICATION.

No. 4345 M.—21st November 1896.—It is hereby notified for general information that in, supersession of all previous rules on the subject, the Lieutenant-Governor is pleased to lay down the following rules under section 15* and 69 of the Bengal Municipal Act III of 1884 as amended by Bengal Acts IV of 1894 and II of 1896, for the conduct of all future elections of Commissioners of Municipalities —

1. In these rules—

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

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

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

(d) A person shall be deemed to be resident within the limits of a Municipality if he—

(1) ordinarily lives within those limits, or

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

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

*For case law on the subject see notes to sections 14 and 15.

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

Of the qualification of voters.

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

- (i) has during the year immediately preceding such election paid an aggregate amount of not less than Rs. 1-8 (Rs. 3 in Howrah, and Cossipore-Chitpur) in respect of any one or more of the rates specified in section 15 of the Act, or in respect of the fees for the registration of carts under section 143 of the Act ; or

Year.—see note under section 15.

Has paid—for meaning of—see note under section 15.

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

Has paid or been assessed—for meaning of—see note under section 15.

- (iii) being a graduate or licentiate of any University, or having passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other University or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a muktear or as a revenue agent—occupies a holding or part of a holding, in respect of which there has been paid, during the year aforesaid, in respect of any rates specified in section 15 of the Act, an aggregate amount of not

less than Rs. 1-8 (Rs. 3 in Howrah and Cossipore-Chitpore) ; or

- (iv) has, during the same period, paid not less than Rs. 20 as rent in respect of the occupation by him of a holding or part of a holding which is assessed with the rate under section 85, clause (b) of the Act.

Occupies—see notes under section 15.

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

- (1) prior to the creation of the Municipality was qualified under the rules framed under section 138 (a) of the Bengal Local Self-Government Act, 1885, to vote at an election of members of a Local Board in respect of the area within the limits of the newly-created Municipality ; or
- (2) has, during the year immediately preceding the election, paid an amount of not less than 12 annas on account of chaulkidari tax , or
- (3) being a graduate or licentiate of any University or having passed the First Arts Examination of the Calcutta University or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorising him to practise as a pleader or as a muktear or as a revenue-agent—occupies a holding, or part of a holding, in respect of which there has been paid during the year aforesaid an amount of not less than 12 annas on account of chaulkidari tax.

(Of the registration of voters.)

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

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

6. Any person whose name does not appear in the register, and who claims the right of voting may, within 15 days of the publication thereof apply to the Chairman in writing to have his name added to the register or substituted for any name in the register.

Within Fifteen days of publication —It is submitted that the Chairman has no power to extend the time limited under any of these rules. Cf. *In re. R. C. Sen* I. L. R. 39 Cal. 598, 16 C. W. N. 472.

Apply to the Chairman —Evidently means that the application must be lodged either with the Chairman himself or with an officer or department authorised by the Chairman to receive them. Cf. *In re R. C. Sen*, I. L. R. 39 Cal. 598.

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

8. The Chairman shall, not less than 30 days before the date of election, send a letter to every incorporated Company

entitled to vote, requesting it to fill in a form, which shall accompany such letter, with the name of the person authorised to vote on behalf of such Corporation, and to return the same within seven days. Upon receipt of the form the Chairman shall cause the name stated therein to be entered in the register revised under Rule 9, and the person whose name is thus entered shall be deemed to be duly authorised to vote on behalf of the said Corporation.

Note.—Any one, possessing qualifications set out in rule 2 and duly registered as a voter as provided by rules 4 to 12, is eligible for election as a Commissioner ; and the fact that such a person is registered as a voter under this rule as a representative of a corporation instead of being registered in his own capacity does not disqualify him for election, *Rash Behary v Stalkart*, 16. C.W. N. 710 ; 16. C. L. J. 212.

9. Every application for the revision of the register under rules 6 and 7 shall be considered and decided by the Chairman with all reasonable despatch on some date of which three days, notice shall have been given by publication in the Municipal Office ; and not less than fifteen days before the date of the election, the Chairman shall publish a revised register in the same manner as the original register containing all alterations or amendments made in such original register by his order or by order of the Magistrate under the next succeeding rule.

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

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

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

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

Of the qualification and the nomination of candidates.

13. Any person qualified to vote under these rules, and not disqualified under section 57 of the Act*, shall be qualified to be elected a Commissioner.

See the case of *Rash Behary v Stalkart* noted under rule 8.

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

Not less than 21 and 15 days—Obviously mean so many clear days between the acts required to be done under this rule and the day of election. Sundays and holidays falling within the period need not be excluded ; and it is submitted that the case of *Howes v. Turner* (1. C. P.

*Notification No 44 T—M the 30th May 1898.

D. 670) sometimes quoted in support of such exclusion is no authority for such exclusion ; in as much as the ruling is based upon express provision of a statute.

The Chairman shall.—*Cf. In re Corkhill*—(I. L. R. 22 Cal 717) where it is has been held that the condition must be strictly complied with and the Chairman has no discretion to insist upon or waive the condition as he may choose. It has been further held in the case that in matters of election the powers of the Chairman are not judicial ; he has only to comply strictly with the rules. See also *In re Mati Lal Ghose* (I. L. R. 19 Cal. 192),

Of the manner of holding elections.

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

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

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

17. The poll shall be held at such time and place as the Commissioners in meeting or the Chairman may determine, and the place at which and the hours between which the votes will be recorded shall be notified by beat of drum and by the publication of notices at the same time as the list of candidates is published under Rule 14*.

17A. After the second hour mentioned in the notice referred to in the last preceding rule no elector shall be admitted within the building or enclosure within which the election proceedings are being held, but the votes of all duly registered voters who are already within the building or enclosure shall be recorded*.

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

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

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

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

22. No objection to a voter shall be entertained except on the ground that he is not the person under whose name as entered in Register A he claims to vote. Such objections shall be summarily decided by the presiding officer.

In *B. G. M. Cir. No. 2M., January 14, 1896* (Govt Cir, Vol. III, p. 1025) it has been ruled by the Lieutenant-Governor with the advice of the Advocate-General that it is irregular for Government servants to vote twice in elections, once in respect of their private residences and again on behalf of Government as owner of the public buildings in the town. The Advocate-General has said in this connection that no person

can vote at a municipal election for holdings of which Government is the registered proprietor, and on account of which Government pays rents and taxes. He has added that it is clear from the terms of section 15 of the Bengal Municipal Act that the qualifications required to entitle any person to vote are personal qualifications, and can not be exercised by any person in respect of Government buildings.

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

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

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

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

26. The list of duly returned candidates for the whole Municipality shall be forwarded by the Chairman through the District

Magistrate to the Commissioner of the Division for publication by him in the *Calcutta Gazette*.

26A. When a Municipal Commissioner is after election found to be disqualified under section 57 of the Act, a bye-election shall be held to fill his place — *Notification No 417 M, May 30, 1898.*

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

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

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

General

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

The Magistrate — See the definition in section 6 cl (8), also rule 7 cl (a). Cf. *Vijayarajha ahu v. Theogaraya* (I. L. R. 35 Mad 581) where it was held that a Magistrate, acting under similar circumstances, was not a Court subject to the Appellate Jurisdiction of the High Court.

Final — Compare *Nataraja v. Municipal Council of Mayasaram* (I. L. R. 36 Mad 120) where it has been held that if an order has been passed without any enquiry at all, or has been based on grounds other than those set forth in the rules, a suit will probably lie to set it aside as *ultra vires*. But where an order has been passed after compliance with the requirements of the rules, and purports to be based on proper grounds, it cannot be questioned in a Civil Court, but is conclusive as far as the result of the election is concerned. In other words, a candidate adversely affected cannot demand that a civil Court should hold a fresh enquiry into the merits of the dispute, and, if it comes to a different decision on them, should treat the Collector's (here the Magistrate's) order as a nullity and give a declaration avoiding the result and effect of the election

See also *Chunilal v. Ahmedabad Municipality* (I. L. R. 36 Bom. 47) in which the principle enunciated is that where a statute creates a right not existing at common law and prescribed particular remedy for its enforcement, then that remedy alone must be followed.

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

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

FORM A

Register of persons qualified to vote in

Ward of

Municipality

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